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Fair Trading Amendment (Commercial Agents) Regulation 2021  
Better Regulation Division, Regulatory Policy  
4 Parramatta Square  
12 Darcy Street  
PARRAMATTA NSW 2150  
07/11/2021

To whom it may concern;

A)

Having been in this industry for some 45 years plus I am still dismayed at the changes that have ensued over those years still has serious flaws; this I believe as a result of the decision makers having little grass roots knowledge of the sub classes actual machinations.

The most glaring error which desperately needs to be addressed is the very fact that PROCESS SERVING is still contained within the Commercial Agents Licensing purvey.

Process Serving is an industry which is tightly entwined to the Private Investigation Industry – or conversely the other way round – and should at this most opportune time of regulatory change, be allocated under the Act covering Private Investigation.

Process serving is the act of serving due process so issued in a court of appropriate jurisdiction. This process covers Criminal Law; Family Law, Court Orders and so the list goes on for almost any other Court or Tribunal in all States of the Nation. The rules and regulations in how any particular piece of Process may be served are set down by the regulations within the Service and Execution of Process ACT along with amendments.

The type of documents a Process Server will serve are often well beyond those a Commercial Agent under the new ACT seems to even consider. Commercial Agents per se' are all about private entities collecting bad debts and outstanding debts; e.g. commercial monies. True Process Servers step well beyond these confines of law and into every facet of Court issued document.

For Example:

A Process Server is given a family Law document to serve upon a Respondent in an acrimonious matter to the point the Respondent is going to do everything in their power to avoid first identification, then locating a place of service, then avoiding service when location has been achieved. A Court Order for substituted service will only be issued if and when every endeavour to locate the Responded has been exhausted and hence the Court is satisfied such an order warrants being made. The Process Server, to satisfy such requirements immediately reverts to being a Private Investigator to achieve this.

This simple explanation immediately above can be attributed to almost every – if not – all forms of Process Service no matter the particular document being served. *This I speak from decades of experience.*

In a nutshell; a Process server will employ – and has to – use every form of tool and process available to someone just acting as a Private Investigator, so as to be as effective in successfully effecting service as possible. At no time during this process is the Process Server acting as a Commercial Agent.

When a Process Server serves a Court issued document – even such as a statement of claim, a Bankruptcy Notice or a Creditors Petition – he is acting as an 'Acting officer of the Court in the form of a Process Server'. He is in no way acting as a debt collector. He has no interest in the documents claims or otherwise, other than to understand the document/s being served are authentic and appropriate under the law to be served. The three mentioned documents above – just for some – are Court issued documents to be served under the Service and Execution ACT so mentioned above; unless: A Judge or Magistrate has made orders for service in another manner; which after investigating many a situation, so often occurs.

It would be so easy to go on here re this above issue for reams; but I am sure that an intelligent person will understand exactly my case here. It is essential that Private Investigation and Process Serving are sub clauses of each other. It matters little which licence becomes the sub-clause.

B)

I note that there is reference in the changes, to time of calls a field officer can make.

Again; in respect to a Process Server's duties – I use my work ethic here as an example – calling on public holidays is often the only time a serial avoider to service can be located. There are rules in respect to no service Christmas and Easter and I personally will not attempt service Mother's day, Father's day, Anzac day where such days are that which I believe will be observed for what they are by the person to be served. There are exceptions, such as Court Orders for one. The actual time of the day call depicted under the new proposal are ludicrous. By 9am, most people sought are gone for the day and often depending on the person to be served's employment or profession – shift work for example – it is impossible to define the correct time. I will note that 9pm is generally my personal cut off time for attendance for service and often earlier depending on the type of person being served – such as a woman living alone. Surveillance upon an address may be necessary and this becomes Investigations from the outset once again. One may find such a manner of location is the only way to locate and serve someone who for many reasons has no reasonable or known time of arriving home, or to where they maybe served.

Investigations and Process Serving are melded to each other. To be otherwise as touted in the proposed changes; all that is achieved is forcing a Process Server to be governed by to Authorities; two different sets of licenses and hence more cost. If a Process Server's abilities are hamstrung as it appears they will be, the effect on slower litigation across the entire State's Court system will be exacerbated – we may not be seen, but we as Process Servers are integral to the effectiveness and timeliness of Court's Process. Process Servers are not Commercial Agents; this is just a quirk of historical licencing; something the proposed changes are addressing, but I believe failing to understand the facts re the Process Serving industry.

C)

In respect to the amount of information which is publicly available re an Agent's personal situation, there are real concerns.

Many, many – it would be interesting to quantify – Process Servers are one man and partnership entities and often have an office which is associated with their residential address. This is nationwide. There is and always has been a tendency for some people having been served to see the person who served them as the only reason they are before the Courts – this is often true if we remove the fact they have transgressed somehow. As a result, the need to protect the personal well-being of a Process Server is in many ways the ACT's duty and obligation and I mention this here so those framing the ACT have forewarning such matters need to be very seriously considered. You cannot charge a fee for the right to operate; set the rules of operation; attempt to write out any liability in legalise, then deny an aggrieved Process Server his right to compensation. I am sure should it come to it, the High Court would soon have the framers making amendments.

## **Conclusion:**

It is clear that although historically a Commercial Agent's license held the sub-license of a Process Server; the now proposes to the such licensing needs to ensure that the sub-licence of Process Server stay very much under the Private Investigation category and hence remain with SLED/CAPI management; it is not part of the private entity debt collection industry in general and I submit here that positive and negative licencing of the Commercial Agents industry, covers office staff of such businesses; field agents calling on alleged debtors and repossession agents.

I am happy to discuss this further with whomever; happy to join a conference meeting should there be a need, but I am dismayed and perturbed the current proposal for Process Service to come under Fair Trading as an adjudicating authority. I have previously by submission in the past iterated that Process Serving always remain under Police scrutiny/purvey and authority, and again cannot strongly enough reaffirm this remains so.

Regards