

Queensland 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



Queensland
Government

Government Response to the Report on the Review of Regulatory Reform (Phase 2) – *Property Agents and Motor Dealers Act 2000*

SDPC RECOMMENDATIONS

A. Amendments to Act for introduction by 30 September 2008

The Director-General, Department of Justice and the Attorney-General make arrangements for the introduction into Parliament of legislation by 30 September 2008 to amend the *Property Agents and Motor Dealers Act 2000* as outlined below.

Recommendation A1.

Remove being an agent for the buying and selling of businesses as an area of exclusive activity for real estate agents.

Government Response: *Not supported.*

In Queensland real estate agents are authorised to act as an agent to buy, sell or let businesses.

All other Australian States and Territories regulate business agents in a similar manner.

Therefore Queensland does not support the recommendation to remove the licensing of this type of activity.

Recommendation A2.

Reduce the regulation of real estate salespersons (effective from 1 July 2009) by:

- removing the requirement for real estate salespersons to be registered (i.e. licensed)
- retaining the requirement for minimum qualifications for salespersons
- requiring employers to check prospective salespersons for:
 - the minimum qualifications
 - whether the person is on a list of 'disqualified persons' published by the department
 - whether the person has recent relevant criminal convictions as prescribed in regulation
- requiring employers to keep records of the above information for all salespersons, and
- including transitional arrangements for persons with pre-existing adverse histories which would disqualify them from being a real estate salesperson.

Government Response: *Not supported.*

The Government does not support this recommendation as there would be a significant reduction in consumer protection if this was implemented.

The Government considers that the registration of salespersons increases consumer protection as the registration process requires criminal history checks and the requirements to attain a minimum level of competence based on a national training package. Disciplinary action relating to registration also allows for the removal of unsuitable persons whose actions may be detrimental to consumer interests and rights.

The Government notes that South Australia, which had de-registered real estate salespersons, has now re-registered real estate salespersons in line with consumer protection requirements. The Government understands that this is because real estate licensees and salespersons were abusing the competency requirements imposed on employers.

PROPERTY DEVELOPERS

Recommendation A3.

Remove the requirement for property developers and their employees to be licensed, effective from 1 July 2009.

Government Response: *Supported.*

While the Government supports this recommendation, the suggested timeframe in Recommendation A3 is not supported.

On 3 July 2008, the Council of Australian Governments (COAG) agreed to develop a national trade licensing system (NLS) for several economically important occupational areas including the property agent occupational area. Property developers are included in the property agent occupational area for the purposes of the COAG NLS. The development of the NLS is subject to the States and Territories signing an intergovernmental agreement at COAG in early 2009.

Following agreement by the States and Territories on the broad outline of the NLS, a process will commence to develop the licence policy standards for each of the occupational areas. National licence policy standards will be developed having regard for COAG's Principles of Best Practice Regulation. The licence policy will define the licence categories / classes / conditions; the scope of work permitted by the licence; eligibility requirements; duration of the licence; requirements for maintaining a licence; and the licence fees to be applied.

Consequently until the outcome of the NLS licence policy development process is known, the Government does not support any changes to the licensing arrangements of the property agent occupational area. Therefore implementation of this recommendation should be carried out to coincide with the implementation of the COAG NLS reforms.

PRESENTATION AND DELIVERY OF RESIDENTIAL REAL ESTATE CONTRACTS

Recommendation A4.

Streamline the approach to the presentation and delivery of residential real estate contracts by:

- repealing Chapter 11 (Residential property sales), other than relevant definitions, sections 365A, 365B, 368 to 370 and Part 4
- enacting provisions requiring the inclusion of an information statement in residential real estate contracts, of no more than one page in length, as prescribed under regulation
- enacting provisions stating that the information statement in the contract is to be signed by the buyer as acknowledgment of reading the statement prior to signing the contract, with such signature being necessary for the contract to be validly made
- providing that existing contracts can only be invalidated on procedural grounds (under the provisions to be repealed) for a period of 6 months after their repeal, and
- making parallel amendments to the *Body Corporate and Community Management Act 1997* to repeal sections 206A and 213A (and amend sections 206 and 213) which prescribe how the information sheet must be given to a buyer.

Government Response: *Partially supported.*

The Government supports the streamlining of the presentation and delivery of residential contracts. However the repeal of Chapter 11 is not supported.

Chapter 11 contains important consumer information provisions which would be reduced if Chapter 11 was substantially repealed. While real estate agents have vigorously campaigned against the requirements in

Chapter 11, there has been no measurable decrease in the volume of sales proceeding to settlement and it has improved the quality of contract documentation and preparation by real estate agents.

Generally, the Government supports the streamlining by editing and simplifying some of the processes and to ensure that 'technical' failures in the contractual delivery process do not form the basis for litigation. Several minor amendments relating to the delivery of relevant contracts have been identified for consideration in amending the principal legislation.

The Government supports review and/or redesign of the Warning Statement, based on capacity to invoke a positive response by consumers. Review and/or redesign of the Warning Statement require only a revised approved form and do not require legislative amendment.

While part of the recommendation is partially supported, implementation should be delayed until mid 2009. This is because as part of the Ministerial Council on Consumer Affairs (MCCA), the Standing Committee of Officials of Consumer Affairs (SCOCA) has commissioned research by an independent consultant (UniQuest Pty Ltd, via University of Queensland) into pre-contractual disclosure under the Uniform Consumer Credit Code, with the goal of developing an evidence-based disclosure model which addresses the needs of consumers.

The Government anticipates that the independent consultant will present its final research report by 30 May 2009. This research could inform any review or revision of real estate and motor dealing approved forms relating to disclosure, particularly in relation to the Warning Statement and PAMDA Form 30c that are attached to residential property contracts. Therefore the development of any new forms should be delayed pending receipt of the research findings.

Market testing of re-designed forms must also be carried out through market research and focus groups to ensure that the forms perform their intended functions effectively. A re-design of the forms is not beneficial unless there is evidence to show that the forms convey key costs and terms to consumers to enable consumers to make informed decisions about the contractual process. Importantly, the results from market testing must show that the re-designed forms are more effective than the current versions to justify the implementation costs that industry may incur in adopting the re-designed versions.

While the current Warning Statement has attention-grabbing fonts, surveying of buyers has revealed that only 20% of persons surveyed recalled the Warning Statement and that less than 5% actioned the advice and information given in the Warning Statement. As the information in the Warning Statement is considered critical for informed consumer decision making, maximising the impact and effectiveness of this form is paramount. The purpose of the Warning Statement should be aimed at motivating buyers to take action to protect their interests when purchasing residential property, rather than merely providing information which buyers may ignore or may not action or use to inform their decision making.

As part of the review of Chapter 11 and the forms, the Government will consider whether it is necessary to make any parallel amendments to the Body Corporate and Community Management Act 1997.

MOTOR DEALERS

Recommendation A5.

Remove the requirement for the department to approve motor dealers' premises as part of a licence application.

Government Response: *Supported.*

It is noted that local government by-laws cover the operation of business premises.

Recommendation A6.

Reduce the regulation of motor dealer salespersons (effective from 1 July 2009) by:

- removing the requirement for motor dealer salespersons to be registered (i.e. licensed)
- removing the requirement for minimum qualifications
- requiring employers to check prospective salespersons for:
 - whether the person is on a list of 'disqualified persons' published by the department, and
 - whether the person has recent relevant criminal convictions as prescribed in regulation
- requiring them to keep records of the above information for all salespersons, and
- including transitional arrangements for persons with pre-existing adverse histories which would disqualify them from being a used motor vehicle salesperson.

Government Response: *Not supported.*

The Government does not support this recommendation principally on consumer protection grounds. Adopting Recommendation A6 would result in a reduction in consumer protection mechanisms that are currently provided through the registration process. The registration process for salespersons increases consumer protection by requiring criminal history checks and a minimum level of competence, based on a national training package. Additionally, disciplinary action relating to registration allows for the removal of unsuitable persons whose actions may be detrimental to consumer interests and rights.

Implementing Recommendation A6 would also entail significant additional cost and impositions on employers. For example, employers would be required to conduct character checks on potential salespersons.

Recommendation A7.

Streamline the approach to the sale of used motor vehicles by:

- repealing the requirement for separate forms to accompany the contract for the sale of a used motor vehicle
- enacting provisions requiring the inclusion of an information statement in used motor vehicle contracts, of no more than one page in length, as prescribed under regulation
- enacting provisions stating that the information statement in the contract is to be signed by the buyer as acknowledgment of reading the statement prior to signing the contract
- requiring detailed information on the buyer's rights and obligations under the statutory warranty to be included in the contract itself, as prescribed under regulation, and
- requiring a vehicle delivery statement to be included in the contract, as prescribed under regulation, to be completed when the buyer takes actual possession of the vehicle.

Government Response: *Partially supported.*

The Government supports a review of the approach to the sale of used motor vehicles and associated forms. However the Government does not support the repeal of the requirement for separate forms to accompany the contract for sale. This is because, there are three separate processes in transactions for the sale of motor vehicles that must be represented in the forms: a) pre-contractual information; b) the contract and receipt of purchase money or deposits; and c) post-contractual considerations. Consequently, incorporation of the three processes into a single form is impractical. Including pre-contractual information about cooling-off and statutory warranty rights in the contract does not assist buyers to make informed decisions prior to signing the contract. Additionally, some post-contractual information requires the insertion of time lines, such as cooling off periods or commencement and completion dates for the statutory warranty period, and should not be added to the contract post-settlement.

The Government supports the redesign and streamlining of motor dealer approved form, which will seek to reduce the number of approved forms from thirteen to three, ensuring that the remaining forms adequately cover the disclosure requirements of the three processes to the sale transaction and remove redundant or repetitive information requirements.

Like Recommendation A4, any re-designed forms must be subjected to market-based testing to ensure the new forms are more effective than the current forms and convey the key cost and terms associated with the sale of the used motor vehicle. See comments in Recommendation A4 regarding implementation.

Recommendation A8.

Remove the requirement for a hard copy of the Register of Encumbered Vehicles (REVS) certificate to be provided when a used motor vehicle is sold to another motor dealer

Government Response: *Not supported.*

In July 2006, the Council of Australian Governments (COAG) added Personal Property Securities to its list of agreed areas for cross-jurisdictional regulatory reform. COAG also endorsed the development of a national PPS scheme and agreed that the system would be implemented by 2009, would be funded by the Commonwealth and implemented by Commonwealth legislation supported by a referral of power from the States.

An outcome of these COAG reforms will be the transfer of the REVS to the Commonwealth. Accordingly, the Government will maintain the status quo until transfer of the REVS to the Commonwealth to avoid creating any inconsistencies with the intended national register.

Recommendation A9.

Provide for only one category of used vehicle warranty, that is, for a vehicle which has travelled less than 160 000 km and is less than 10 years old – a warranty of three months or 5000 km (whichever comes first).

Government Response: *Not supported.*

Currently, there are two levels of statutory warranties which are intended to enhance consumer protection by providing a minimum level of quality assurance for the purchase of used vehicles. The two-tiered statutory warranty is particularly aimed at purchases at the lower end of the used vehicle market, affording protection to those consumers who can least afford to defend their rights in relation to defective vehicles.

Recommendation A10.

Require motor dealers to place an appropriate sign on used motor vehicles which do not have a statutory warranty

Government Response: *Not supported.*

The Government does not support this recommendation as existing sections of the legislation already specify the requirement for signage, in certain circumstances.

Recommendation A11.

Amend the definition of ‘motor dealing’ in the Act to include an additional test that any person who buys six (or more) vehicles and sells those same six vehicles in a 12 month period (including having any financial interest in such dealings) would be considered to be dealing in motor vehicles, and would be required to be licensed.

Government Response: *Not supported.*

The Government acknowledges this recommendation is an attempt to define motor dealing in empirical terms. However, this recommendation will provide significant loopholes for 'backyard' used motor vehicle dealers. Such motor vehicle dealers may reorganise their operations to include the sale of up to, but not including, six vehicles in any year, and to sell similar numbers of vehicles listed under the names of relatives or other people.

Additionally, adoption of this recommendation would unnecessarily complicate enforcement of used motor vehicle dealer licensing provisions.

AUCTIONEERS

Recommendation A12.

Remove the requirement for general auctioneers (and trainee auctioneers) to be licensed (effective from 1 July 2009).

Government Response: *Not Supported.*

The Government does not support any reduction in consumer protection mechanisms. Licensing ensures that probity and character checks are carried out on auctioneers. Licensing of auctioneers enables consumers who have bought or sold property through an auctioneer to make claims against the Claim Fund established under the legislation. This protection would not be available if auctioneers were unlicensed.

Further, removing licensing requirements while retaining conduct requirements for trust accounts can complicate compliance and monitoring mechanisms, such as trust account audits. Additionally, the itinerant nature of the general auction industry (whereby many auctions are conducted on-site, rather than at a defined registered office or business premises) further complicates compliance as locating auctioneers and assessing their conduct is problematic.

Recommendation A13.

Authorise only licensed real estate agents to undertake real estate (and livestock) auctions.

Government Response: *Not supported.*

As Recommendation A12 is not supported, auctioneer licensing will be retained.

Recommendation A14.

Authorise only licensed motor dealers to undertake motor vehicle auctions.

Government Response: *Not supported.*

As Recommendation A12 is not supported, auctioneer licensing will be retained.

Recommendation A15.

Retain the requirement for general auctioneers to comply with the trust fund provisions of the Act, but remove the application of the Claim Fund provisions to general auctioneers.

Government Response: *Not supported.*

The Government does not support any changes which may result in a reduction in consumer protection. Consumer protection is best served by retaining access to the Claim Fund for consumers who suffer financial loss because of a specified contravention by a general auctioneer.

Recommendation A16.

Exempt persons from holding a motor dealers licence to auction motor vehicles as part of a clearing sale auction on a rural property.

Government Response: *Not supported.*

This does not need to be implemented because Recommendation A12 is not supported. Therefore a person who auctions motor vehicles as part of a clearing sale auction on a rural property will continue to be required to be licensed as a general auctioneer and is authorised to sell motor vehicles under that license. Licensees must comply with the trust account and conduct requirements of the legislation and consumers therefore will retain access to the Claim Fund.

Recommendation A17.

Exclude the cooling-off period from applying to sales made on the day of an auction (real estate and motor vehicles).

Government Response: *Not supported.*

The requirement to give a cooling-off period in contracts for the sale of residential real estate and used motor vehicles is intended to give purchasers an opportunity to assess and inform themselves properly about these substantial investments. Auctions are specifically excluded from the requirement to provide purchasers with cooling-off periods because auctions cannot function with a cooling-off process.

The Government considers that used motor vehicle dealers could easily restructure their business to conduct, or hold out that they conduct, daily auctions of their stock and thereby avoid or negate the cooling-off requirements.

PASTORAL HOUSES

Recommendation A18.

Remove the pastoral house licensing category.

Government Response: *Supported.*

It is noted that pastoral houses only exist in Queensland and currently there are only two licensed pastoral houses.

The Government supports this recommendation coupled with Recommendation A19 which will see pastoral house licensees transitioned to real estate licensees.

However, pastoral house directors and pastoral house salespersons are included in the property agent occupational area for the purposes of the COAG NLS (see also the Government Response to Recommendation A3 in relation to the COAG NLS for the property agent occupational area). Until the model for the NLS is known, the Government will not make any changes to the licensing arrangements in any of the property agent occupational areas. Therefore, implementation of Recommendation A18 should be carried out at the same time or after implementation of the COAG NLS reforms.

Recommendation A19.

Transition existing pastoral house licensees (pastoral house directors and managers) across to being licensed real estate agents.

Government Response: *Supported.*

The Government supports this recommendation. However, as stated above, pastoral house directors and pastoral house salespersons are included in the NLS review (see also the Government Response to Recommendation A3 in relation to the COAG NLS for the property agent occupational area). Until the model of the NLS is known, the Government will not make any changes to the licensing arrangements in any of the property agent occupational areas. Therefore, implementation of Recommendation A19 should be carried out at the same time as (or after) the implementation of the COAG NLS reforms.

Recommendation A20.

Transition existing pastoral house salespersons to meet the revised requirements for real estate salespersons under the Act.

Government Response: *Supported.*

The Government supports this recommendation, however as noted in response to Recommendation A18 and A19, implementation of this recommendation should be undertaken at the same time as or after implementation of the COAG NLS reforms.

CODES OF CONDUCT (amendments to Act)

Recommendation A21.

Adopt an expanded definition of ‘acting in an unprofessional way’, (which forms the basis for disciplinary action under the Act) to include:

- breaching a fiduciary obligation which the licensee or employee has as an agent
- failing to act in a client’s best interests
- failing to act in accordance with a client’s instructions
- engaging in fraudulent or misleading conduct, and
- engaging in high pressure tactics, harassment or unconscionable conduct.

Government Response: *Supported.*

The Government’s support for Recommendation A21 is qualified by retaining codes of conduct separate from the Act (see Recommendation C7, which recommends repealing the codes of conduct).

The Government supports a general review of existing codes of conduct offences and whether any of these offences should become part of the principal legislation. Any amendment to the Codes should coincide with the splitting of the current legislation into industry specific laws (refer Recommendation B1)

COMMERCIAL AGENTS

Recommendation A22.

Remove the content and process restrictions on the appointment of commercial agents to act for a client.

Government Response: *Not supported.*

The Government does not support this recommendation because unlike other regulated occupations, commercial agents must be appointed in writing (with specified content such as stating the fees and charges), but not by an approved form. This process facilitates notifications from clients by fax, email or mail. Where urgent processing is required, the commercial agent can be appointed for functions over an extended period of time, thereby not necessitating separate appointments for each debt collection, repossession or process service. Written appointment is to be retained to preserve consumer protection in the engagement of commercial agents.

OTHER ISSUES

Recommendation A23.

Remove the requirement for a commercial sub-agent to identify employers when applying for employee registration or on renewal of registration (noting that under the Review's proposals only employees of commercial agents will continue to be registered).

Government Response: *Supported.*

This recommendation is supported provided the legislation specifies that a sub-agent cannot operate on a registration certificate except under the direction of a licensed commercial agent employer. Currently section 84 sets out the requirements for registration, including the name and business address of the licensed commercial agent employer.

Recommendation A24.

Remove the requirement for a resident letting agent to have purchased management rights before applying for a licence.

Government Response: *Supported.*

The Government considers that removing the requirement for resident letting managers to have purchased management rights prior to seeking licensing will speed up the application process substantially. It will also remove any doubt about eligibility for a licence prior to a prospective resident letting agent committing to a substantial investment in management rights, that they may not be able to exercise if a licence is not granted. However, the prospective resident letting agent would still be required to notify Department about the place of business and provide evidence of approval from the appropriate body corporate prior to the licence being issued.

Recommendation A25.

Remove the requirement for employed licensees (e.g. employed real estate agents and employed resident letting agents) to notify the department of a change of employers.

Government Response: *Supported.*

This recommendation is supported provided the licensee retains the responsibility of maintaining employment registers and that registered employees continue to be required to notify the department of changes in employment (refer Recommendation A27).

Recommendation A26.

Remove the requirement for corporations to have a licensee as a director.

Government Response: *Supported.*

This recommendation is supported provided a person in charge of the corporation's business (such as a director or employee) is licensed and that all directors remain subject to the suitability requirements currently existing in the legislation. That is, the directors have not been disqualified from holding licences or convicted of offences which would preclude them from meeting suitability requirements.

Any changes impacting on the licensing requirements for property agent occupations must be consistent with the reforms under the COAG NLS for property agent occupational areas (see response to Recommendation A3). Therefore implementation of this recommendation should be carried out at the same time as (or after) the implementation of the COAG NLS reforms.

Recommendation A27.

Remove the requirement to maintain employee registers.

Government Response: *Not supported.*

The Government considers that either employee registers or employment authorities should be maintained as evidence of the employment of particular salespersons by a licensee at particular times. This is essential as Recommendation A25 which is supported by Government, proposes a repeal of the requirement for licensees to notify the Department of any change in employers.

The requirement to maintain employee registers does not impose any additional costs on employers as they are required to maintain employment records for tax and industrial relations purposes. Registers assists identification of industry participants for enforcement and compliance actions.

Recommendation A28.

Remove the requirement to provide employees with employment authorities.

Government Response: *Supported.*

Given the Government is not supporting Recommendation A27 for the reasons noted above, this recommendation is supported.

Recommendation A29.

Require licensees to only notify the department of the establishment of a trust account (general trust account or special trust account) within 14 days of its establishment, and on its closure.

Government Response: *Supported.*

The Government notes that currently a licensee is required to give the department written notice of the licensee's intention to open a trust account, and notice when the account has been opened. This recommendation is supported as it will remove an unnecessary notification, while retaining an obligation on licensees to notify the details of a trust account upon opening.

Recommendation A30.

Remove the criteria regarding the character of a person and a person's business associates when applying for a licence.

Government Response: *Not supported.*

The Government considers these criteria to be core considerations in all licensing jurisdictions in Australia and provide consumer protections. Therefore this recommendation is not supported.

Additionally, character issues may form part of the COAG NLS reforms for property agent occupational areas and any changes to this criteria may be inconsistent with the COAG NLS. Until the outcome of the NLS licence policy development process is known, the Government will not make any changes to the licensing arrangements of the property agent occupational area.

Recommendation A31.

Remove references in the Act to 'approved forms' and, where relevant, replace with references to being prescribed under regulation (refer to recommendation C6).

Government Response: *Not supported.*

The Government considers that having a provision which provides for ‘approved forms’ allows greater flexibility and greater responsiveness to marketplace and consumer demands for the provision of information, advice and disclosure of rights and responsibilities.

Appointment forms can be user designed, subject to setting out prescribed information about fees, charges and services. Currently, approved forms are readily available on the internet and are easily amended via approval by the Chief Executive of the Department of Justice and Attorney-General and Gazettal.

Recommendation A32.

Reduce the regulation in relation to the display and production of licences by:

- removing the requirement for the licence to be displayed in a licensee’s registered office
- removing the requirement for a licensee (other than a commercial agent or sub-agent) to produce a licence when requested to do so (wherever the person may be)
- removing the requirement for a licensee to display their name on a sign in each office in the prescribed way, and
- replacing the above provisions with a requirement for a licensed business to have copies of the licences (corporate and individual licensees) available for inspection at each place of business, including the option of displaying the licences.

Government Response: *Partially supported.*

The recommendation to remove the requirement for the licence to be displayed in a licensee’s registered office is supported because a licensee’s registered office may be the professional offices of the licensee’s accountant or lawyer, and not necessarily the licensee’s place of business.

However, the requirement for a licensee to display a licence at the licensee’s actual place of business should be retained and therefore this part of the recommendation is not supported.

The recommendation to remove the requirement for a licensee (other than a commercial agent or sub-agent) to produce a licence when requested to do so (wherever the person may be) is not supported because the Government considers that the public must be able to easily ascertain whether they are dealing with a licensed person.

The recommendation to remove the requirement for a licensee to display their name on a sign in each office in the prescribed way is not supported because the Government considers clients/customers need to be assured that they are dealing with a licensed person in order to be afforded the protections offered by the legislation, including claim and redress rights.

The Government does not support the final recommendation that the above provisions should be replaced with a requirement for a licensed business to have copies of the licences (corporate and individual licensees) available for inspection at each place of business, including the option of displaying the licences. The Government’s position is that the licence must be displayed at the place of business.

Recommendation A33.

Remove the requirement for a real estate agent to disclose to a buyer the commission paid by the seller for the sale.

Government Response: *Not supported.*

The Government does not support this recommendation. This measure (disclosures in approved Form 27a) is part of the anti-marketeering provisions which inform buyers whether excessive marketing and other fees are being applied to their purchases.

Recommendation A34.

Remove the requirement to provide photographs with licence applications, except for commercial agents (refer to recommendation D3).

Government Response: *Supported.*

B. AMENDMENTS TO LEGISLATION FOR CABINET APPROVAL BY 31 MAY 2009

Recommendation B1.

The Director-General, Department of Justice and Attorney-General prepare for Cabinet consideration, by 31 May 2009, an Authority to Prepare Cabinet Submission to repeal the *Property Agents and Motor Dealers Act 2000*, and to:

- establish an Act regulating real estate agents (including resident letting agents)
- establish an Act regulating motor dealers
- transfer the provisions dealing with trust funds to the *Fair Trading Act 1989*, and
- transfer the provisions dealing with commercial agents to the *Security Providers Act 1993*, maintaining commercial agents as a separate class of licence.

Government Response: *Supported.*

The Government considers that separating the regulated occupations into separate legislation will also facilitate Queensland's implementation of the COAG NLS initiatives for property agent occupational areas. However the implementation of this recommendation should be carried out at the same time as (or after) implementation of the COAG NLS reforms.

Additionally, commercial agents should be covered by stand-alone legislation and not attached to the Security Provider Act 1993, as commercial agents have no significant connection with the security providers industry.

Given the Government has not supported the repeal of auctioneer licensing and conduct provisions, consideration will be given to placing relevant auctioneer provisions in stand alone legislation.

Further consideration will be given to the appropriate vehicle upon which to place the trust accounting, receivership and claim fund provisions as the Government anticipates Queensland's Fair Trading Act 1989 may be subsumed by national legislation.

Recommendation B2.

The Director-General, Department of Justice and Attorney-General ensure the above-mentioned legislation:

- involves a reconsideration of the extent of criminal history checks, and
- incorporates penalties which better reflect the nature of the activities being regulated.

Government Response: *Not supported.*

The Government does not support the recommendation that the Director-General, Department of Justice and Attorney-General should ensure the Property Agents and Motor Dealers Act 2000 involves a reconsideration of the extent of criminal history checks. The Government considers that criminal and character checks are central to the integrity of the licensing system and apply across all Australian jurisdictions.

Further, the Government does not support a review of penalties in the legislation. The existing penalties are intended to represent deterrence in relation to behaviour which results in consumer detriment, particularly as in the case of real property and motor vehicle transactions consumer detriment can be substantial.

C. AMENDMENTS TO REGULATIONS

Recommendation C1.

The Director-General, Department of Justice and Attorney-General make arrangements for the level of commissions prescribed under the *Property Agents and Motor Dealers Regulation 2001* to be amended by 30 September 2008 as follows:

- retain maximum commissions for the collection of rent for holiday tenancies pending the review of body corporate/resident manager relationships (refer recommendation D1)
- remove the regulation of commissions on the sale of property by auction from 1 January 2009
- remove the regulation of commissions for properties listed at greater than \$1M from 1 January 2009
- remove the regulation of commissions for properties listed at greater than \$0.75M from 1 January 2010
- remove the regulation of commissions for properties listed at greater than \$0.5M from 1 January 2011, and
- remove other maximum commissions from 1 January 2009.

Government Response: *Not supported.*

The Government notes that two separate reviews of real estate commissions were conducted in 2002 and 2004-2005. Neither of these reviews was able to establish satisfactory evidence that a de-regulated commission regime would be beneficial to real estate consumers. As a result, the Government considers it is in the best interests of consumers to maintain a regulated maximum commission cap on residential property transactions for both sales and property management and leasing.

Recommendation C2.

The Director-General, Department of Justice and Attorney-General prepare, by 30 September 2008, a targeted advertising campaign advising consumers of their changed rights in relation to commissions.

Government Response: *Not supported.*

This recommendation is redundant as Recommendation C1 is not supported.

Recommendation C3.

The Director-General, Department of Justice and Attorney-General make arrangements to:

- develop an information statement for residential real estate contracts which incorporates:
 - a brief statement of a buyer's rights during the cooling-off period
 - a recommendation from the government to buyers to seek legal advice and an independent property valuation of the property
 - a brief statement of an agent's obligations to advise a buyer of any relationships with a person to whom the buyer is referred for services, and
 - for buyers of property in a community titles scheme, a brief statement of an agent's obligations to provide the buyer with an information statement and a disclosure statement
- consult consumer groups, the real estate industry and the legal profession in the development of the information statement, and
- ensure the new arrangements are in place by 31 March 2009.

Government Response: *Supported.*

As noted in the Government's response to Recommendation A4, as part of the Ministerial Council on Consumer Affairs (MCCA), the Standing Committee of Officials of Consumer Affairs (SCOCA) has commissioned research by an independent consultant (UniQuest Pty Ltd, via University of Queensland) into

pre-contractual disclosure under the Uniform Consumer Credit Code, with the goal of developing an evidence-based disclosure model which addresses the needs of consumers. The Government anticipates that the independent consultant will present its final research report by 30 May 2009.

This research could inform any review or revision of real estate and motor dealing approved forms relating to disclosure. Development of any new forms should be delayed pending receipt of the research findings.

Market testing of re-designed forms must be carried out through market research and focus groups to ensure that the forms perform their intended functions effectively. A re-design of the forms is not beneficial unless there is evidence to show that the forms convey key costs and terms to consumers to enable consumers to make informed decisions about the contractual process. Importantly, the results from market testing must show that the re-designed forms are more effective than the current versions to justify the implementation costs that industry may incur in adopting the re-designed versions.

Recommendation C4.

The Director-General, Department of Justice and Attorney-General make arrangements to:

- develop an information statement for used vehicle contracts that incorporates:
 - a brief statement of a buyer's rights during the cooling-off period
 - whether or not the vehicle is subject to a statutory warranty and, if so, a brief statement of the buyer's rights under the warranty, and
 - a brief statement describing the dealer's obligation to guarantee title to the vehicle
- require the detail of the statutory warranty to be incorporated in used vehicle contracts
- require that the vehicle delivery statement include the odometer reading and date of taking possession of the vehicle so the end point for the statutory warranty can be specified
- consult consumer groups, the motor vehicle industry and the legal profession in the development of the information statement, and
- ensure the new arrangements are in place by 31 March 2009.

Government Response: *Partially supported.*

The Government partially supports the recommendation to develop an information statement for used vehicle contracts as per Recommendations A4, A7 and C3 above.

The redesign of motor dealer approved forms will seek to reduce the number of approved forms from thirteen to three, ensuring that the remaining forms adequately cover the disclosure requirements of the processes involved in the sale transaction and remove redundant or repetitive information requirements.

The Government does not support the inclusion of the statutory warranty in the used vehicle contract because the legislation does not currently prescribe or approve contracts for motor dealing transactions. These are commercial negotiations between the dealer and vehicle buyer. The Motor Trades Association of Queensland (MTAQ) and other motor dealer support organisations publish standard form contracts for use by motor dealers.

Recommendation C5.

The Director-General, Department of Justice and Attorney-General make arrangements to amend the *Property Agents and Motor Dealers Regulation 2001* to remove the requirement for a person to have conducted five auctions under the supervision of an auctioneer to be licensed to undertake auctions, effective from 1 July 2009.

Government Response: *Not supported.*

The Government considers that this requirement gives a person practical experience in auctioneering under supervision prior to operating independently as a general auctioneer. The Government will retain an exemption from conducting the five auctions if comparable experience is demonstrated in another jurisdiction.

Recommendation C6.

The Director-General, Department of Justice and Attorney-General reduce the use of forms under the Act by 31 March 2009 in accordance with Appendix 1.

Government Response: *Supported.*

The Government supports a review of, and reduction in the number of approved forms, particularly in relation to appointment forms. However, the need for market testing of any re-designed forms and to delay the re-design process pending the release of the research findings for consumer credit pre-contractual disclosure (see comments in response to Recommendations C3 and C4 above). Therefore these timeframes will need to be recast to allow time to develop and test re-designed forms.

CODES OF CONDUCT (amendments to regulations)

Recommendation C7.

The Director-General, Department of Justice and Attorney-General make arrangements to repeal the Code of Conduct and place provisions in the *Property Agents and Motor Dealers Regulation 2001* where a specific offence is identified, for example, disclosing confidential information, effective from 31 March 2009.

Government Response: *Not supported.*

The Government considers codes of conduct should be retained as these define and set general principle-based standards for professional and ethical conduct for licensee's better than principal legislation and are preferred in the legislative policy hierarchy as vehicles for standards of conduct. Codes of conduct provide additional and alternative means of conduct compliance. For example the Code requires licensees to act fairly to all parties to a transaction (Section 7 of the Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001); this general conduct requirement would need to be converted into prescriptive drafting if it were to be translated into principal legislation. (See also the Government response to Recommendation A21).

Some conduct issues are best dealt with by means of disciplinary action, rather than through the Courts. However, it is acknowledged that a review of compliance with the Code of Conduct is necessary, particularly whether some Code of Conduct issues warrant significant monetary penalties and therefore should be made into a legislative or regulatory offence.

Recommendation C8.

The Director-General, Department of Justice and Attorney-General ensure that the alternative arrangements to the Code of Conduct for commercial agents are consistent with the ACCC / ASIC debt collection guideline for collectors and creditors.

Government Response: *Not supported.*

The Government does not support alternative arrangements or repeal of the Code of Conduct for commercial agents. Refer to the Government's response to Recommendations A21 and C7.

D. OTHER RECOMMENDATIONS

Recommendation D1.

The Director-General, Department of Justice and Attorney-General make arrangements to commence, by 1 September 2008, an independent review of the regulation of the resident letting agent / resident manager industry under the *Body Corporate and Community Management Act 1997* and *Property Agents and Motor Dealers Act 2000* including:

- the relationship and accountabilities between resident letting agents / resident managers and unit owners / bodies corporate
- the appropriateness of the maximum 25 year term for resident management rights
- the benefits of introducing controls over the use of related companies by resident letting agents / resident managers
- enhanced disclosure of financial information from resident letting agents / resident managers to unit owners / bodies corporate
- enhanced auditing requirements of accounts managed by resident letting agents / resident managers
- the appropriateness of the licensing arrangements for resident letting agents
- the requirement for resident letting agents to live on-site
- whether letting activities of resident letting agents should continue to be limited to one building
- whether maximum commissions for letting activities should continue to be regulated, and
- whether improvements could be made to the dispute resolution processes to more expeditiously resolve disputes between resident letting agents / resident managers and unit owners / bodies corporate.

Government Response: *Not Supported.*

The Government does not support this recommendation as a significant review of the Body Corporate and Community Management Act 1997 was carried out approximately 12 months after its commencement in 1997. Significant amendments were also carried out in 2002 / 2003 and a further discussion/issues paper was circulated in 2004. This resulted in further amendments which were implemented in 2007. More recently, the regulations under the Body Corporate and Community Management Act 1997 have been reviewed.

Additionally, the Government has committed to review all legislation on a regular basis; this legislation will be reviewed within that broader timetable.

Recommendation D2.

The Director-General, Department of Justice and Attorney-General make arrangements to commence, by 1 January 2009 an investigation into the incorporation of commissions into building contracts related to property development and consider whether building contracts which are related to property development should have increased disclosure requirements.

Government Response: *Supported. However, the Domestic Building Contracts Act 2000 falls within the portfolio of the Minister for Public Works, Housing and Information and Communication Technology and is administered by the Queensland Building Services Authority (QBSA), therefore this recommendation has been referred to the QBSA.*

The QBSA supports this recommendation and believes there is merit in conducting an investigation into the payment of commissions in building contracts. The review will be completed by 30 June 2009.

Recommendation D3.

The Director-General, Department of Justice and Attorney-General make arrangements for commercial agents be provided with a photo licence by 1 July 2009.

Government Response: *Supported.*

However, the timeframe for implementation of this recommendation will be revised.

Recommendation D4.

The Under-Treasurer ensure that the department's competition and regulatory reform function recently transferred to Queensland Treasury includes a role of undertaking independent legislative reviews of targeted legislation as part of an ongoing regulatory reform program.

Government Response: *Not supported.*

The Government does not support this recommendation. The Government acknowledges that there is benefit in undertaking reviews of targeted legislation as part of an ongoing regulatory reform program. Agencies are responsible for identifying regulatory issues, conducting reviews and developing recommendations for consideration by Government. The Under-Treasurer, through the Queensland Office for Regulatory Efficiency (QORE), will continue to be responsible for coordinating a program of regulatory reviews across Government. Further, the Treasurer, through QORE, will lead and direct the State and national reform agendas across the Queensland Government. QORE will work closely with agencies to assist them in identifying opportunities to reduce the burden of their existing regulatory/legislative stock on individuals, business and government (including via public reviews).