



LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr IM Berry MP (Chair)
Mr AS Dillaway MP
Mr TS Mulherin MP
Mr TJ Watts MP (via teleconference)
Mr PW Wellington MP (via teleconference)

Members in attendance:

Mr MJ Hart MP

Staff present:

Ms R Stacey (Principal Research Officer)
Mr G Thomson (Principal Research Officer)

**PUBLIC BRIEFING—INQUIRY INTO THE PROPERTY
OCCUPATIONS BILL 2013; MOTOR DEALERS AND
CHATTEL AUCTIONEERS BILL 2013; DEBT
COLLECTORS (FIELD AGENTS AND COLLECTION
AGENTS) BILL 2013; AGENTS FINANCIAL
ADMINISTRATION BILL 2013; & FAIR TRADING
INSPECTORS BILL 2013**

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 12 DECEMBER 2013

Brisbane

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Committee met at 2.32 pm

BROWN, Mr Shane, Policy and Legislation Office, Office of Regulatory Policy

CLAYTON, Ms Julia, Policy and Legislation Officer, Office of Regulatory Policy

COAR, Ms Leah, Senior Policy and Legislation Officer, Office of Regulatory Policy

FORD, Mr David, Deputy Director-General, Liquor, Gaming and Fair Trading

GIBSON, Ms Tafline, Senior Policy and Legislation Officer, Office of Regulatory Policy

REARDON, Mr David, Principal Policy and Legislation Officer, Office of Regulatory Policy

SMITH, Ms Shayna, Director, Office of Regulatory Policy

CHAIR: Thank you for your attendance here this afternoon. We will now begin the consideration of the Property Occupations Bill 2013; Motor Dealers and Chattel Auctioneers Bill 2013; Debt Collectors (Field Agents and Collection Agents) Bill 2013; Agents Financial Administration Bill 2013; and Fair Trading Inspectors Bill 2013. Good afternoon and thank you for your coming along today. I remind you to, before speaking, please identify yourselves and speak clearly for Hansard.

The committee have had the benefit of receiving the department's initial written briefings on the bills. We have a number of questions for the department this afternoon. However, Mr Ford, would you care to make a short opening statement on the bills?

Before you do so, I indicate that I am the member for Ipswich. Also present are the member for Mackay, the member for Bulimba and the member for Burleigh. By phone we have the deputy chair and member for Nicklin, Mr Peter Wellington, and the member for Toowoomba North, Mr Trevor Watts.

Mr Ford: Thank you very much, Mr Chairman. Thank you for the opportunity to brief you today about the Property Occupations Bill 2013, the Motor Dealers and Chattel Auctioneers Bill 2013, the Debt Collectors (Field Agents and Collection Agents) Bill 2013, the Agents Financial Administration Bill 2013 and the Fair Trading Inspectors Bill 2013.

The bills reflect a significant structural change in the legislative framework for occupations and activities currently regulated by the Property Agents and Motor Dealers Act 2000 as well as in relation to inspectorate provisions in legislation dealing with fair trading and consumer protection matters.

The Property Agents and Motor Dealers Act has a number of important public policy functions. The act establishes an occupational licensing system for businesses and individuals operating in the real property sector, for example real estate agents and residential letting agents, as well as motor dealers, auctioneers, debt collectors and process servers. It also contains specific consumer protection provisions and the contract warning and disclosure obligations relating to residential property sales. A further important consumer protection aspect of the Property Agents and Motor Dealers Act is that it establishes a claim fund to compensate consumers who suffer financial loss as a result of particular actions of licensed agents.

There is no doubt that an effective framework that protects consumers while promoting freedom of enterprise in the marketplace continues to be critical for occupations currently regulated under the act. However, for some time stakeholders have expressed the concern that the Property Agents and Motor Dealers Act has become increasingly cumbersome and difficult to use. Also, concerns have been raised that in some instances the highly prescriptive regulatory measures contained in the act are a disproportionate response to the policy problems they purport to resolve.

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This package of legislation aims to resolve these issues in two ways. First, it proposes to repeal the Property Agents and Motor Dealers Act and replace it with three industry-specific acts, those being the Property Occupations Act, the Motor Dealers and Chattel Auctioneers Act and the Debt Collectors (Field Agents and Collection Agents) Act, accompanied by the Agents Financial Administration Act, which deals with trust accounting and other financial obligations of licensees and registered employees across the industry-specific acts and continues the operation of the claim fund. This new legislative structure avoids the one-size-fits-all approach of the Property Agents and Motor Dealers Act, which seeks to regulate a number of diverse industries within one act and will allow more tailored and targeted responses to policy issues arising in the regulated industries in the future. Second, the proposed legislation implements a substantial reduction in regulation and red tape currently imposed on individuals and businesses under the Property Agents and Motor Dealers Act. The reduction of regulation and red tape squarely aligns with the government's commitment to reducing regulation across the Queensland economy by 20 per cent.

The proposal to split the Property Agents and Motor Dealers Act arose some time ago as a result of a review of the act by the Service Delivery and Performance Commission which was informed by extensive consultation with stakeholders. Indeed, bills to split the Property Agents and Motor Dealers Act were introduced into the former parliament and were considered by a predecessor to this committee. However, the bills lapsed upon dissolution of the parliament prior to the 2012 general election.

The current government decided to proceed with the split of the Property Agents and Motor Dealers Act; however, it also decided to incorporate a red-tape-reduction review with respect to the proposed bills. Accordingly, the bills were released for consultation in February 2012 with a specific goal of identifying opportunities to remove or reduce regulation under the bills before they were introduced into the parliament. Over 86 submissions were received containing over 100 different proposals for amendment to the bills. Many of those proposals highlighted opportunities to reduce the regulations and restrictions currently imposed by the Property Agents and Motor Dealers Act and have been incorporated into the bills.

Overall, there is strong stakeholder support for splitting the Property Agents and Motor Dealers Act. A qualification to this is that some stakeholders do not agree with the split of auctioneering functions across two of the acts. That is, the Property Occupations Act deals with the auctioning of real property, while the Motor Dealers and Chattel Auctioneers Act deals with the auctioning of motor vehicles and chattels. In part this structure was adopted to accommodate the possible adoption of the National Occupational Licensing System in Queensland which only deals with real property auction activities. I understand that the government will be making decisions about the future adoption of the National Occupational Licensing System in Queensland in the near future.

More generally, though, I would note that the bill splits the Property Agents and Motor Dealers Act along industry lines. For example, the Property Occupations Bill deals with the real property sector, the Motor Dealers and Chattel Auctioneers Bill deals with agents activities involving used motor vehicles and chattels, and the debt collectors bill deals with the debt collection and process-serving industries.

In some instances there is overlap in the functions some licensees perform. As a result, the nature of splitting the Property Agents and Motor Dealers Act means that the relatively small number of agents who work across different industry sectors will be regulated by more than one act. The most pertinent example of this is that auctioneers who perform auctions of both real property and motor vehicles or other chattels will be required to hold a licence under the Property Occupations Act and the Motor Dealers and Chattel Auctioneers Act. However, measures will be in place to ensure that the burden of holding two licences is minimised. For example, there are proposed fee concessions for licensees with licences under both acts. In addition, the eligibility requirements for licensing under both acts, apart from educational requirements, will be virtually the same to avoid unnecessary inconsistencies and uncertainty about probity requirements under the respective acts. Further, a licensed auctioneer under the Property Occupations Act will be able to sell goods by way of auction without a chattel auctioneer licence if the sale of goods is directly connected with the real property auction.

An advantage of splitting auction functions across two acts is that training and conduct provisions can be tailored to particular needs of the industry sector. For example, there will be no need for a person who only conducts motor vehicle or chattel auctions to undergo training in competencies that are only relevant for real property auctions. This is a complaint raised about the current single auctioneer licence.

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In general terms, stakeholders also support reductions in regulation and red tape under the bill. Of course, as the committee would expect with such a large legislative package, not all stakeholders agree on all issues. One theme that emerged in some submissions, particularly from the used motor vehicle sector, was that stakeholders were advocating for increases in restriction and regulation under the bills. For the most part, these proposals have not been adopted, including because the regulatory burden was inconsistent with the policy objectives of the bills as well as with broader government policy about reducing regulation and red tape. Moreover, it was considered that a number of issues prompting proposals for increased regulation could be addressed by industry itself or through enforcement of existing laws. The committee can also expect that some stakeholders will raise concern about reduction of regulation of licensed agents, particularly in relation to the removal of caps on commissions to property agents and relaxation of restrictions on residential letting agents.

Queensland is currently the only Australian jurisdiction with a cap on commissions payable to property agents. While the cap is intended to protect consumers by setting a maximum commission rate, it has become something of a default rate and consumers appear to have little prospect of negotiating a lower rate. Removing the cap on maximum commissions is intended to stimulate increased competition between agents on fees, charges and commissions, thereby putting downward pressure on costs for consumers engaging an agent. The Office of Fair Trading intends to conduct information strategies to support the deregulation of commissions which focus on the need for consumers to shop around and compare fees, charges and commissions between agents.

In terms of residential letting agents, as many committee members know, management rights in community titles schemes can be a contentious issue, and a review of management rights under the Body Corporate and Community Management Act 1997 is ongoing.

The primary purpose of the Property Agents and Motor Dealers Act and the Property Occupations Bill is to ensure that only appropriate people are authorised to be licensed to perform functions under the act. Unlike the Property Agents and Motor Dealers Act, the Property Occupations Bill does not include requirements for residential letting agents to live on site or restrictions on how many buildings a residential letting agent can provide to services. In short, these are not relevant considerations in deciding whether a particular person is suitable to be licensed as a residential letting agent. However, the changes to licensing requirements for residential letting agents is not intended to interfere with contractual obligations contained in agreements between a body corporate and the caretaking service contractor.

Before concluding, I will make some very brief comments about the Fair Trading Inspectors Bill. The bill changes the way inspectorate compliance and enforcement provisions are dealt with in a number of acts about fair trading. Rather than having similar, albeit slightly inconsistent inspectorate provisions contained in each act, the Fair Trading Inspectors Bill enacts common inspectorate provisions for 14 separate acts about fair trading and consumer protection matters. This is a more efficient approach to dealing with compliance and enforcement matters in fair trading acts and will promote consistency in the enforcement of fair trading legislation. No stakeholder issues have been identified in relation to the Fair Trading Inspectors Bill. Mr Chairman, thank you for the opportunity to brief you on the five bills. We are more than happy to answer any questions that the committee may have.

CHAIR: Thank you. Before I proceed, committee members, because there are seven people who may have the ability to answer the question, if the committee member could, before asking a question, state what bill they are referring to? That might also help. Does anybody wish to start?

Mr WELLINGTON: Could I perhaps lead off and then I can be quiet and listen to other members.

CHAIR: Yes, Peter. What is the bill to which your question refers?

Mr WELLINGTON: Under the Property Agents and Motor Dealers Act there is a proposal to establish a claims fund to compensate consumers who suffer loss as a result of a particular action of licensees. The first part of the question is: is this a continuation of the existing claims fund or is this a new claims fund proposal?

Mr Ford: Mr Wellington, it is a continuation of the existing claim fund.

Mr WELLINGTON: Thank you. The second part of my question is has the government, or are you aware of any previous government, drawn money out of that fund to go to consolidated revenue?

Mr Ford: Mr Wellington, as I understand it the moneys that go into the fund are paid into consolidated revenue and consolidated revenue then pays any of the obligations of the fund out of consolidated revenue.

Mr WELLINGTON: Okay. If I can jump forward to the issue involving the inspectors under the Fair Trading Inspectors Bill. I note you refer to new powers where the inspectors will have powers to stop and search vehicles. In the material provided to the committee it is commented that it is anticipated that the power would be used infrequently and sparingly. I ask: what evidence can you present to the committee that that is actually the way it will happen? The reason I ask the question is that when we saw the recent bikie legislation introduced the minister and the government said, 'Not a problem. Lawful bike riders will not be affected.' Yet we have had hundreds of bike riders stopped, searched, victimised because they simply rode bikes. What I am asking is what evidence can you present to our committee whereby those words are believable?

Mr Ford: Mr Wellington, I think probably the correct response is to say that those actions would need to be taken under the 14 pieces of legislation which are covered by the Fair Trading Inspectors Bill. They would need to be relevant to those pieces of legislation and the enforcement of those pieces of legislation. Relatively few of those pieces of legislation, or the provisions of those, would give rise to a circumstance where an inspector would need to hold up a vehicle or to search a vehicle. So the scope for using those powers across the 14 pieces of legislation are actually relatively limited. I will pass over to my colleague David Reardon to add to that.

Mr Reardon: Mr Wellington, yes, further to Mr Ford's comment, with clause 33 of the Fair Trading Inspectors Bill, basically, the powers will apply where an inspector reasonably suspects or is aware that a thing in or on a vehicle may provide evidence of the commission of an offence against the fair trading inspectors act or one of the primary acts. So there does need to be a link—a suspicion of an offence under one of those fair trading acts for the powers to apply.

Mr WELLINGTON: Thank you for that, but could I just say from my perspective that we received those assurances from the government in relation to the bikie legislation—that lawful bike riders would not be affected. But that has not been the case. If I could move on. Is there any simple system that you have where we can see under the new bill what is a continuation of the current law and what is the new component? As I read through the material, one paragraph says, 'This is exactly the same as what we have currently. It is simply an amalgamation of what is in the current range of bills.' The next paragraph says, 'This is a new part.' Is there any simple way that you have that you can provide to our committee where we can quite clearly see what sections or what parts of what sections are proposed new laws for Queensland?

Mr Ford: Mr Wellington, that is actually quite difficult. It is not difficult because it is conceptually difficult; it is difficult because in a practical sense we have taken one very large piece of legislation and a body of work from a range of other pieces of legislation and melded them into five completely new pieces of legislation. So the practical effects of supplying a simple chart—and I can quite understand the nature of your request—in doing that are enormous.

Mr WELLINGTON: All right. That is fine. I just thought I would ask because, as I was reading it, it just seemed to me, 'I don't have a problem. This is all the same. What we have is just putting it into a simpler format,' and the next paragraph, 'Here's the new proposal.' Thank you. I will listen to other members now.

CHAIR: I might just follow up with a question. Effectively, I thought in your opening statement you were saying that this break-up of legislation was anticipated by the previous government and what effectively this present government is doing is continuing on that process, as I understand. Is that the position?

Mr Ford: That is absolutely correct. The initial approach of the previous government was effectively a policy-neutral transition. The current government, because of its objectives in terms of red tape reduction, then reopened those five pieces of legislation to see whether there are any nips or tucks that could be incorporated in them to reduce the red tape that was involved. These are relatively red tape unfriendly pieces of legislation in some ways and that is really the only change. As far as I am aware—and if any of my colleagues want to dispute this I would be more than happy to accept it—there are no increases in the regulatory burden contained in these pieces of legislation; just some reductions to provide a more sensible arrangement.

CHAIR: I might follow on with a question. How many government forms are required when a Queenslanders wishes to purchase a used car in this state? Someone told me that is around 14 forms. Does that sound familiar or am I simply being over the top?

Mr Ford: It is a long time since I bought a used car. Some of my colleagues might be able to help.

Mr Brown: That is a figure that was an earlier figure for the number of approved forms for various types of used motor vehicle transactions. That has been reduced by the current Motor Dealers and Chattel Auctioneers Bill substantially and further work to develop packages that will be accompanied by the development of the regulations to support the bill—

CHAIR: If I can summarise what you are saying—

Mr Brown: Yes.

CHAIR: We are dealing with fewer forms now?

Mr Brown: Yes, fewer forms.

Mr MULHERIN: My question relates to the Property Occupations Bill. This bill is a general suitability test for property agents but we do not have the automatic cancellation of licences for persons identified by the commissioner as a participant in a criminal organisation. Has the CMC raised concerns that participants in criminal organisations who launder money as real estate agents and property developers may not necessarily be excluded from holding a licence in the industry, given that the CMC report into organised crime and money laundering and the Australian Crime Commission clearly outline how organised criminals are using this industry for money laundering, particularly on the Gold Coast? I can table the relevant reports.

CHAIR: You mean as agents?

Mr MULHERIN: The CMC report and the Australian Crime Commission are saying that there are criminal organisations that launder money through the real estate industry, particularly on the Gold Coast. My question relates to the suitability for property agents. There is a test that they have to go through, but there is no automatic cancellation of the licence if a person has been identified by the commissioner as a participant sometime after. Here is the Australian Crime Commission stuff.

CHAIR: Yes. The only reason I asked that question was that I just was not sure as an agent it is so transparent in terms of commission but, as a buyer and seller, of course, that may not be. That bill does deal with this. If you could perhaps answer the question as best you are able to do?

Mr Ford: Mr Chairman, I will give several answers, if I may. Firstly, I am not aware of any approach by the CMC and the property—

Mr MULHERIN: I suppose the question is did you approach the CMC for comment?

Mr Ford: Not specifically in the context of this legislation that I am aware of. However, there have been ongoing discussions between the Department of Justice and the CMC over the whole question of what has become the bikie legislation. As you would be aware, we were in front of this committee not very long back with some amendments to a range of other pieces of legislation. This was not one that I am aware of there having been any request to amend.

Part 2: there is in the legislation now a provision where we can cancel automatically for what is regarded as a serious offence and that includes an offence punishable by three or more years of imprisonment and includes an offence involving fraud or dishonesty. So the answer to your question is in all probability we would have the power to remove the licence of a person who was found guilty of one of those sorts of offences. I should add that, when it comes to dealing with money laundering and unexplained income, I am not sure that the property agents legislation is necessarily the best way to deal with that. I think perhaps the unexplained wealth legislation that the government already has at its disposal may well be better.

I should say as a general comment, though, that I would not underestimate the checking process which goes on in checking the probity of real estate agents before they are licensed. They are caught up, as I understand it, in an ongoing checking process to ensure that any offences that are committed are brought to the attention of the fair trading authorities who can take the appropriate action against them.

Mr MULHERIN: The other question is that the government has appointed Brigadier Bill Mellor to oversee and coordinate the government's response to organised crime issues. Did Brigadier Mellor look at this legislation? Did he have oversight of this legislation? Was he consulted?

Mr Ford: I think the time frames for this legislation and the appointment of Brigadier Mellor have not coincided.

Mr MULHERIN: So this legislation was drafted well before the government's response to—

Mr DILLAWAY: A lot of it was drafted, I think, when you guys were still in government.

Mr MULHERIN: Or on bikie—

Mr Ford: That is true. In fact, as the member for Bulimba has correctly said, much of this legislation was drafted quite some time ago.

Mr MULHERIN: I thought with the government's war on bikies that they might have tweaked it, as you said, since the previous government—

Mr DILLAWAY: I think we have.

Mr HART: It is war on criminals, not bikies.

Mr MULHERIN: A war on bikies? A war on criminals?

Mr Ford: My colleague has just reminded me that, while it does not apply to the property agents bill, the motor dealers bill has specifically been amended by the sorts of provisions that you are talking about because of concerns of the CMC in that space.

Mr MULHERIN: The reason I raise it is that the CMC also had concerns about the real estate and property development industry as well.

Mr DILLAWAY: I just want to go back to the Property Occupations Bill. Something that has been raised with me is in regard to the maximum term of a sole or exclusive agency being extended from 60 to 90 days. The first part of this question is can you just clarify why there has been an extra month added to that exclusive agency? The second thing is what opportunity exists for the seller to opt out of that sole or exclusive agency?

Mr Ford: I will make a couple of very broad comments and then leave it to my colleagues to fill in the detail. There was a view put during the course of consultation that the 60 days was too limited. It was fine when the market was bubbling along nicely but it was a very limited term for a sustained marketing campaign in bad times and, therefore, needed an extension. The answer to the second part of your question is yes, there is an opportunity for a vendor to negate that contract with appropriate notice.

Mr WATTS: Sorry, just to clarify that point, that is a maximum. Someone can sign up for a shorter—

CHAIR: I think they are about to tell us, Trevor.

Mr WATTS: Right.

Ms Smith: It is a maximum of 90 days; that is correct. There are two main ways to end the contract earlier. The first is by mutual agreement by the parties to end the contract at a time suited to them. It could be immediately or some other time. The second mechanism that has been included is that one party to the agreement can end the contract unilaterally by giving 30 days notice, but how it is drafted is that, basically, the 30 days notice has to be given after the first 30 days. So in effect the notice that can be given puts us in line with what the current position is, which is a 60-day term. So it mitigates that extra 30 days that is given.

CHAIR: But effectively what you are saying is that you are taking a two-pronged approach in terms of deregulating the commission and allowing some of the exclusivity to get their return back—

Ms Smith: That is right.

CHAIR: Anybody else?

Mr HART: Mr Ford, as you may be aware I not a regular member of this particular committee. I have been given leave to appear and basically represent the members on the Gold Coast and the unit owners and the property managers down there.

CHAIR: We always value your contribution, member for Burleigh.

Mr HART: Mr Ford, there have been a number of issues raised with my office about this particular piece of legislation. I would like to talk about some of those—in particular, the removal of the cap on commissions. We have heard numerous times on the Gold Coast about inflated commissions, commissions pushed up by travel agent fees and various other commissions, adding up to unit owners only receiving a small proportion of the income from their particular units. How do you think that the removal of the cap will lead to more competition for agents in that area?

Mr Ford: Mr Hart, you correctly identify a number of issues we have had on the Gold Coast, and you are probably aware that the Office of Fair Trading has undertaken a number of very substantial, very long-running and, from our point of view, extremely expensive prosecutions in that space. Regrettably we have some compensation for owners in those circumstances but not as much as we would believe they are entitled to. So the law does give us and will continue to give us the opportunity to take action where there has been the sorts of activities that we have prosecuted in the past to continue.

One of the critical things about the new legislation is that in agreeing to pay a commission the vendor or the person purchasing the services needs to have a very clear agreement with the agent as to what the terms and conditions of that contract are. That needs to be well set out. It needs to be understood by both parties and signed as a contract by both parties and enforceable by both parties. So I think there should be a level of transparency about the arrangements that could perhaps be better than it has been in the past.

The other comment I would make is that in making that change the government was mindful of the fact that we are the only jurisdiction that has any caps on commissions at the moment. I must say that the circumstances in other jurisdictions which do not have caps and have not for some time are on the whole no better and no worse than they are in Queensland. So the existence of the cap does not seem to have assisted in either competition or in enforcement by purchasers of their rights. I am happy if anyone else wants to add to that.

Mr HART: Can I just expand on that a little bit before you give any further answers. If you take away the cap, how are you going to be able to prosecute people for taking more commission than they are entitled to?

Mr Ford: The reality is that there will be a contract between the parties as to the level of commission that they are entitled to take.

Mr HART: So there are already existing contracts with unit owners on the Gold Coast and resident managers that are in place already. Will they have to all be changed?

Mr Ford: My understanding is not.

CHAIR: Effectively what you are saying is that you are taking away the implication of contract by having a governmental term and you are saying, 'Well, guys, you get together and talk about all the relevant features and agree to it so you both know where you stand.' That is the thrust of it, isn't it?

Mr Ford: That is broadly the thrust of it, Mr Chairman. One of the things that has been characteristic of the current arrangement is that, whether it is in the residential letting space or in the sale of real property space, it is virtually impossible to negotiate a commission at the moment. Indeed, we have had anecdotal advice that for a number of agents they regard the government cap as being a set fee. The only way really to disabuse them of that is to say there is no set fee.

CHAIR: And effectively you will hopefully get what you pay for ultimately when you become perhaps more of a professional investor looking for a return. Sorry, Ms Gibson, were you wanting to make a further comment in relation to that?

Ms Gibson: I think Mr Ford has covered it but thank you for the opportunity.

CHAIR: This is a broad question and it refers probably to both property and vehicles. I am particularly interested in making sure that consumers are still as protected now as they were before in respect of purchasing homes and motor vehicles. Has there been any change to the protection afforded to consumers?

Mr Ford: I do not believe in the macro sense that there has been. There have been some red-tape reduction measures initiated. For instance, the classic illustration is—and given your former profession you would be well aware of this, Mr Chairman—the requirement for a separate warning statement to be on the front of a contract.

CHAIR: Which nobody reads.

Mr Ford: Which nobody reads and which has resulted in a lot of litigation which has been probably pretty unhelpful to the sector as a whole. That warning statement will still exist but it will be incorporated in the body of the contract and it will be incorporated in a place immediately above where the person who signs the contract signs the contract. So I do not believe that that is actually going to lessen the consumer protection around it. David, is there anything that you would regard as a lessening of consumer protection?

Mr Reardon: No. I think that is a good summary from Mr Ford. The other thing I would add about the contract warning is that, as well as being incorporated into the contract itself, it will be in a much simpler form. There has been a lot of effort put into trying to focus on what do purchasers really need to know and to make those points in a clear way rather than being lost in lengthy, cumbersome documents.

CHAIR: In terms of cooling-off periods, are they much the same compared to other states?

Ms Smith: We have not altered the length of the cooling-off period or really any of the provisions around the cooling-off period. We have inserted clarification to the legislation which has been requested for some time about how cooling-off periods apply to option contracts. So that clarification has been inserted. Clause 160 in the bill relates to how cooling off applies to option contracts.

But, apart from that, the only other real change to cooling off—again, this has been requested for some time and is more about clarification—is, where a property is offered for sale through an auction but it passes in at auction and one of the registered bidders at the auction then subsequently enters into a contract to purchase that property, the cooling-off period does not apply up until the second clear business day following the auction. So the parameters around that are that had they purchased it at auction they would not have obtained a cooling-off period. They were a registered bidder at that auction and it was subsequently entered into after the auction.

Mr HART: Mr Ford, all my questions will revolve around the Property Occupations Bill. I have grave concerns about taking away the requirement for resident letting agents to live on site. On the Gold Coast, as I said before, we have a fairly transient population—people come and go all hours of the night and day and at weekends. If resident letting agents are not required to live on site, won't the standard of our accommodation start to fall away, with people who do not actually live in the building not really caring about the building itself and how it is maintained and things like that?

Mr Ford: I am aware of that argument, Mr Hart. There are a couple of responses to that. Firstly, the legislation is fundamentally about ensuring that people with proper probity and people with the proper training are licensed to perform activities, and there is nothing inherent in whether you live on site or off site that would alter your suitability to be licensed under the legislation. That is the first part of it. The second part of it is that my understanding is that the industry on the Gold Coast is a very diverse industry. It ranges from mums and dads who have bought a letting agency operation as a retirement activity or a quasi-retirement activity—I do not suspect there is much retirement in some of those places—

CHAIR: I think they work harder, don't they?

Mr Ford:—through to what are becoming increasingly commercial activities. What is really important—and the legislation provides for this—is the quality of the agreement between the body corporate, which runs the property, and the letting agent. If the body corporate sees a need for some sort of a late night and early morning coverage for that, then that ought be incorporated in the letting agent's agreement that the body corporate signs off on. The body corporate essentially is going to be buying a set of services through outsourcing or letting to a letting agent, and how they choose to do that is a matter for them to negotiate with the letting agents. I think the requirement to live on site increasingly reflects the history of the industry rather than the future of the industry and may well be an impediment to the increasing professionalisation and therefore the opportunity for bodies corporate to get perhaps better and more professional managers in some instances, and that is not meant to be a slight on the traditional managers in any way at all.

Mr HART: I agree with all of that, but at present there are a lot of buildings that have an office with a unit attached to it or the office is part of a unit. Do you see that changing this legislation will mean that a lot of those units will end up being sold and we can never go back to where we were with this?

Mr Ford: I actually think that is now in the hands of the bodies corporate to resolve their own future. I am sure there will be many that will continue to believe that the current arrangements work well for them, particularly the smaller and middle sized unit blocks.

Mr HART: Will the body corporate still be able to mandate that in their agreement, that the resident letting agent lives on site?

Mr Ford: I see no reason why not, Mr Hart.

CHAIR: It is a capital tie-up, isn't it, really?

Mr Reardon: Yes, I will just echo what Mr Ford was saying. I think it is very important to be clear that what the amendment in the Property Occupations Bill is really about is the eligibility criteria for holding a resident letting agent licence. So it does not impact on existing contractual arrangements that a resident manager might have with a body corporate or future contracts that they might enter into with a body corporate.

Mr HART: Do you have any information about existing contracts and whether they actually contain a requirement for letting agents to live on site or has that been an assumed thing because it has been in legislation?

Mr Ford: I really cannot answer the question, Mr Hart. I would not be at all surprised if it has been an assumed thing because it is in the legislation.

Mr HART: Do we have any transitional arrangements in place to fix this sort of issue?

Mr Ford: I think the transitional arrangement comes with the terms of the letting agency contracts. I think it would be a matter for the bodies to recontract.

Mr HART: So presently a body corporate may well be signed up to an agreement that does not require the manager to live on site but that is in place. If we change the legislation, all of a sudden these people can sell even though the body corporate may want that in place?

CHAIR: The body corporate may buy the unit themselves, perhaps.

Mr Reardon: The only point I would reiterate is that the resident manager will still have to comply with all the terms of their agreement. So if their management rights agreement provides that they have to provide particular services in a particular way, then they would still have to do that even if perhaps they were not required to live on site under the contract.

Mr HART: I see a real danger that the legislation presently says they have to do all of these things and they have to live on site and the contract may not and we are shifting the grounds—

Ms Smith: While the contracts may not say they need to live on site, it is likely they would need to say, for example, 'You need to have an open office between 9 am to 5 pm or have an after-hours manager and so on.' So whether the resident letting agent lives on site or not, they would still have to comply with those kinds of services that are specified.

Mr HART: I still see a gap there and we maybe need to look at that.

Mr Ford: Mr Hart, I think one of the other things that may need to be taken account of—and I cannot really answer the question I am about to ask—is that the major asset for a lot of people who are letting agents is the combination of the unit itself as the real property and the rights to the letting agency. Whether they will neatly divide in the sorts of circumstances you are talking about is not really clear to me at the moment, because if they are going to be divided and provide a lesser net outcome at sales time then I cannot imagine that the letting agents would be wanting to separate the two functions out.

CHAIR: A matter for negotiation.

Mr MULHERIN: The Property Occupations Bill removes the right of termination for a buyer if there is a failure to include particular words in a particular location in the contract. Instead, the seller or their agent is deemed to commit an offence and is liable for a penalty up to \$22,000. It is concerning that this removal might adversely impact upon an ill-informed or a novice buyer. Would you please clarify the rationale behind this removal?

Ms Smith: The termination rights were associated with the warning statement that was attached to the contract and that warning statement has now been removed and, as my colleagues, Tafline and David suggested, it is now a simple consumer statement giving disclosure to a buyer about what things they might need to look at—for example, they have cooling-off rights, obtain an independent valuation—

Mr MULHERIN: So it is really up to the buyer to go to a lawyer to make sure those concerns are expressed in some contractual arrangement?

Ms Smith: That is right. At the moment it has to be above the signature block in the contract. Because of the nature of what the statement has become, to attach a termination right for wording that strongly urges the buyer to seek independent legal advice seemed disproportionate to what the statement was trying to achieve. We also know that there has been a lot of litigation around the current procedures where technical noncompliance has seen a lot of contracts terminated for not substantial reasons but for technical noncompliance. So we were trying to avoid a similar situation.

Mr MULHERIN: There was a case in Mackay where someone bought a unit and then another set of units was put in front that was going to obstruct the view and the person wanted to terminate. That could have a serious impact on the whole construction industry and how unit development is financed. Are the lessons from that the rationale for this change?

Ms Smith: That is right, and we felt that an offence was a more appropriate response.

Mr MULHERIN: The other question I have relates to the Agents Financial Administration Bill. The explanatory notes state—

The Bill also implements a number of minor amendments to address operational issues. The Bill reduces current penalties under the PAMD Act to allow infringement notices to be issued for more minor trust account breaches, such as an early drawing of a commission from a trust account. Under the PAMD Act, these offences attract a maximum penalty of three years imprisonment. Consequently, under the PAMD Act, they are indictable offences and an infringement notice cannot be issued. The Bill reduces the penalties from three years to two years, which provides an efficient and appropriate means of enforcement for relatively minor breaches.

That is a bit more than red-tape reduction, isn't it? It is reducing the penalty for people who steal money from a trust account, like the Friday-Monday rule. You take it out Friday, spend it at the track on Saturday and Sunday, and put it back in on Monday. It is stealing. It is more than red-tape reduction.

Mr Ford: I think there are a couple of answers to that. Firstly, the vast bulk of infringements we have to those sections of the act are relatively minor infringements. They are infringements where, to be honest, prosecution is hard to justify, whereas an infringement notice is entirely appropriate and a very sufficient warning to those people, and that we will be able to do now whereas previously we have been precluded from that. The other is it is my understanding that, if there were a serious defalcation, we might be looking at a lot more than activities under the property agents act to take legal action against those people.

CHAIR: The Criminal Code and so forth.

Mr Ford: Correct.

Mr DILLAWAY: Mr Ford, during part of your consultation process I was contacted by some auctioneers that deal both in real property and chattels. I was wondering if you could explain to us the rationale behind why we have a situation where they need to be licensed under both bills but also what changes they are going to foresee—what additional work they need to undertake if they want to continue to auctioneer in both areas. Are there any concessions available to them because they will now need to effectively get two licences?

Mr Ford: The auctioneers situation has been quite a complex one in working through this whole process. There was a time early in this process where there was a move to not licence motor vehicle and chattel auctions at all but simply to leave the licensing provisions for auctioneers around real property auctions. The industry itself said that it would prefer to continue to have motor vehicle and chattel auctioneers licensed, and the government has determined that is the way to go. I suspect that was in the previous iteration of the legislation as well, although I am not certain about that.

Unfortunately, what has happened from the auctioneers' point of view is that the one downside—and it is one of the very few downsides of splitting one large, multipurpose piece of legislation into specific industry related pieces of legislation—for the odd person who works across the various industries covered by those new legislative parameters is they will need to be multiply licensed if they are acting in those various areas. The policy rationale was to try to make the legislation fit the industries as far as possible, and that meant that for auctioneers who work across two of these industries they are going to have to have two licences.

In terms of additional requirements, in some cases there will be fewer requirements because auctioneers who work only with motor vehicles and chattels will only need to complete the requirements for that licence, which do not include any of the real property information. Further to that, anyone who currently has a licence will continue to be licensed under both pieces of legislation for the time being to be grandfathered in that process. So there are some upsides.

The other upside is that for those licensees who seek to be licensed under a second licence there will be some concessions in terms of licence fees. They will still have to pay a processing fee but the full licence fee will not have to be paid. Given that they can get a three-year licence for a \$70 application fee or something like that—this is still to be sorted out in the regulations—the broad order of magnitude of sums in getting the additional licence is not particularly difficult. Plus we would only have to do the probity investigations on them once. We are hoping to put in the

regulations as simple a mechanism as possible for the second licence. It is a reality that has come out of the framework of the legislation rather than any deliberate intent to cause the auctioneers difficulties.

Mr DILLAWAY: I have a follow-up question. To clarify, you are saying that it would only apply to somebody who was seeking a new licence for both real property and motor vehicles and chattels. Effectively what you are saying is that, if you are an existing auctioneer who goes across various industries, you would be grandfathered and even if your licence was to be renewed it would continue to be grandfathered?

Mr Ford: I suspect you would be grandfathered but once it came to renewal time you would have to pay for the two applications. That is correct, yes.

Mr HART: Mr Ford, going back to the Property Occupations Bill—

Mr DILLAWAY: Really?

Mr HART: Yes, really. You may be aware that the government particularly on the Gold Coast is trying to minimise the occurrences of party houses. I understand that this bill takes away the requirement of the residential letting agent to prove to the chief executive that they have body corporate approval to operate; is that correct?

Mr Reardon: At the moment as part of the licensing process an applicant for a resident letting agent licence has to demonstrate they already have approval from a body corporate to operate a management rights business essentially. What the bill tries to do is to reverse that. If someone is interested in working as a resident letting agent, they will be able to apply for a licence, receive that licence and then negotiate with the body corporate or an existing resident manager to acquire management rights for a building. It avoids the uncertainty that they go and negotiate the purchase of a management rights agreement but then may prove to be not eligible for a resident letting agent licence.

Mr HART: So eventually they have to get approval from the body corporate?

Mr Reardon: Absolutely. They would not be entitled to provide the letting services for the building until they have that letting authority from the body corporate.

Mr HART: There has been some misinformation out there in the industry obviously.

Mr DILLAWAY: Staying on my theme of auctions, society at the moment is driving towards the internet and online. Excuse my ignorance but maybe you can clarify to the committee how you plan to continue to be in front and currently regulate online auctions?

Mr Ford: The Office of Fair Trading operates on two levels in terms of its compliance activities. The first is a complaints driven approach where, if someone believes they have breached the law in the way they have dealt with them, they will lodge a complaint. That complaint will be followed up using a fairly sophisticated complaint process by the Office of Fair Trading. I should add that those complaints, particularly when it comes to industry licensing issues, do not always come from consumers. Sometimes your best advocates in industry licensing are the other members of the industry who believe they are being unfairly disadvantaged by the activities of one of their members.

The second area of activity by the Office of Fair Trading is proactive compliance activities. I will give you an example. In the motor dealers space over the last couple of years we carried out something called Operation Turner where they systematically went around and tested for fairly basic things like licensed motor dealers and winding back of odometers particularly. That resulted in a number of very significant, very successful and relatively high-profile—for fair trading issues—prosecutions through the courts. So, yes, there is a lot of activity in that space. Fair trading does watch advertising, whether it is online or whether it is in the media. Obviously there are some constraints around what we can do with the shift towards online activities, but if you are based in Queensland and you want to sell a motor vehicle other than privately you still have to be licensed, whether you are doing it online or offline, and that is something we are well aware of.

Mr MULHERIN: My questions relate to the Debt Collectors (Field Agents and Collection Agents) Bill 2013. Section 46 of the Debt Collectors (Field Agents and Collection Agents) Bill allows the chief executive to consider the suitability of applicants for a debt collector's licence. The Australian Crime Commission report indicates that organised crime figures are involved in debt collection activities. What I am wondering is why we have a provision in licensing schemes providing for automatic cancellation of licences for members of outlaw organised crime gangs and other industries such as tattoo parlours and tow truck operators but not for debt collectors.

Mr Ford: I will let any of my colleagues who might want to throw a word in on this as well. In the process of negotiating those requirements, which have gone into a number of pieces of legislation recently, this was not one that was raised with us by the CMC as one that required further activity, as far as I am aware.

Ms Smith: I would also like to point out that this legislation focuses on those who collect debts as an agent for reward on behalf of others. A lot of the debt collection issues you might see with criminal gangs and so on are collecting their own debts. It is often said, and it does seem logical, that the legislation would not apply in a lot of those cases.

Mr MULHERIN: It is the same with bailiffs. A lot of their work is debt collection. I appreciate that the courts appoint a bailiff, but a bailiff can then appoint a deputy bailiff without any reference to the courts. Why are they not licensed in this legislation?

CHAIR: I think they come under the auspices of the particular court, don't they?

Mr MULHERIN: The bailiff is appointed by the court, but the deputy bailiff who goes out and does debt collection is not appointed by the court but appointed by a bailiff. So who does the checking to ensure that person is appropriate to carry out those activities?

Mr Ford: We would have to take that one on notice because we do not administer that particular piece of legislation.

CHAIR: I think bailiffs are governed by the particular jurisdiction. In the Magistrates Court a deputy bailiff is governed by the Magistrates Court legislation.

Mr MULHERIN: I am just raising the point that here we are licensing debt collectors. There is another arm of debt collection through the courts, and that is bailiffs. Bailiffs can appoint deputy bailiffs that could be associated with entities that you would not recommend as being suitable to carry out that task. It is something for the committee to consider, I think.

Mr Reardon: If I could add something to that. I am not sure whether this answers your question, Mr Mulherin, but clause 5 of the debt collectors bill provides an exemption for bailiffs. A bailiff under that provision is defined as a bailiff appointed under the Supreme Court act, the District Court act or the Magistrates Court Act. So I think it would depend on whether the deputy bailiffs you are talking about are a bailiff within the meaning of those pieces of legislation. If they are not—if it is outsourced—then I suspect that the licensing provisions would apply.

Mr MULHERIN: Can you clarify that and get back to us?

Mr Reardon: Yes.

Mr MULHERIN: Thanks.

CHAIR: Under the Fair Trading Inspectors Bill 2013, the maximum penalty for not returning an identity card when a person stops being an inspector has gone from 10 to 20 penalty units. Land Sales Act, manufactured homes act—do you get the thrust of what I am saying? What is the reason for the increase in the penalty units?

Mr Reardon: I am sorry, Mr Berry. Could you repeat the question?

CHAIR: By all means. The maximum penalty for not returning an identity card when a person stops being an inspector will double from 10 to 20 penalty units under the Fair Trading Inspectors Bill 2013. I cited a couple of examples—the Land Sales Act, the Manufactured Homes (Residential Parks) Act. Is there a reason for doubling the penalty units?

Mr Reardon: So you are asking about the existing—

CHAIR: The rationale for the policy and the doubling. Is there a greater problem you foresee or has it been past experience that this ought to be a deterrent for a particular activity?

Mr Reardon: We would be happy to double-check that, if that is okay, but, in general terms, the way the Fair Trading Inspectors Bill was drafted, where there were similar provisions across the primary acts the higher penalty was applied as the penalty for that provision. So if in the primary act there was a range of penalties for failing to return your identity card, the highest penalty was chosen.

CHAIR: So you have basically standardised?

Mr Reardon: Exactly. We can double-check that if that is okay.

CHAIR: That is not necessary. I understand what you are saying.

Mr MULHERIN: The Motor Dealers and Chattel Auctioneers Bill excludes the application of a judicial review where the CEO refuses a licence based on advice from the commissioner that an applicant is a participant. Why is this?

Mr Ford: That is entirely consistent with the provisions that have gone into a number of other pieces of legislation as part of the government's desire to deal with outlaw motorcycle gang activities.

Ms Smith: Where a current licensee has had their licence cancelled or an applicant for a licence has had their application refused, there is the ability to apply for a full merit review to QCAT. The provisions around the judicial review were limited because we felt that there was already a full merit review available and there was concern that people might circumvent the full merit review to QCAT to undertake a judicial review application to try to obtain information that police might have about them to come to the conclusion of why they identified as a participant in a criminal organisation. But because that full merit review was available, it was felt that that was appropriate in those circumstances.

Mr WATTS: In relation to motor dealers, I am interested in understanding some of the provisions in relation to protecting consumers. I am wondering if it was considered whether motor dealers should have to trade from council approved business premises or whether they should have to identify a dealer licence when advertising a vehicle, including online, if they are a dealer.

Mr Ford: Mr Watts, I will deal with the first of those issues first. One of the things we have tried to do in bringing the licensing requirements across all of our pieces of legislation into the simplest way we can is to strip out of them those things which are not germane to the licensing of an individual. One of those is the premises, generally speaking, from which they conduct business. The nature of the premises is clearly important, and it is important to councils particularly that people are using property for appropriate purposes. Certainly it would be a matter for the council to take action against someone who was inappropriately using land, say, to sell motor vehicles from if it had not been zoned appropriately for that.

It is the licensing regulator's task from a policy point of view to make sure that the person who is selling the vehicles is appropriate and appropriately trained. The question of where they sell the vehicles from is really a matter for them to deal with local authorities who have responsibility for land zoning. What was the second part of the question?

Mr WATTS: There are a couple of parts to it, I guess. What I am trying to get to here is where someone might be dealing cars fairly regularly on a business or on the side of a road potentially for cash—not really operating in a normal way such as you would expect someone who is licensed to do. The question is: should a dealer have to identify their licence number when advertising, including online? How does that work if it is not happening from approved premises?

Mr Ford: In terms of the display of licence numbers, the person is licensed. They may—and, I would believe, in many cases should—want to advertise the fact that they are licensed. You can look at some other industries where licensing exists—for example, the gold card licensing arrangements around building. You would rarely see a registered builder who does not quote his licence number, whether it is necessary or not, because it is a very important part of their marketing. It is not at all uncommon for dealers to do that. It is something we would encourage. But whether it is actually necessary to include it as a legislative necessity is another question indeed.

I know that this is an issue that some in the industry, in particular the MTAQ, have been keen to pursue. While we are not saying it is not a good thing that this happen, we are not convinced that in the red-tape-reduction environment it is actually a necessity for consumer protection. Consumers have every right to ask for that licence number if they choose to in dealing with that person, and I would have thought it would provide a distinguishing feature for those who were licensed in their marketing.

Mr WATTS: How would that potentially operate in an online environment? Someone could be running a very effective business online without a motor dealers licence.

Mr Ford: Well, yes, they could. Presumably if it was a very effective business, though, it would come to the attention of Fair Trading either through complaints from competing dealers, including online dealers, or through their own proactive investigation in looking at the successful dealing sites to see whether they are licensed. So I am not saying that unlicensed dealers could not function effectively in that space. The question really is for how long they would be able to function before the law caught up with them.

Mr WATTS: Thank you.

CHAIR: The proposed bill will remove the class B short-term statutory warranty requirements for older, typically low-value motor vehicles, with the intent of making legitimate sales of these vehicles more viable. Given that these are usually the backbone of dodgy dealers, how will doing away with class B help reduce the illegal operators of these low-value vehicles? I can understand the reason for it. Effectively, there is not a lot of money in them. I guess you are trying to decrease the cost.

Mr Brown: It has been a widespread belief that the requirement to provide the warranty for older vehicles makes them essentially unsaleable by legitimate dealers because of the cost of servicing those warranties, and people wishing to sell those vehicles generally get offered scrap prices for them. So that is essentially a motivator for older vehicles to be sold by illegitimate dealers who are working on the margins. By removing that warranty, we are hoping that it will actually shift the trade in those older vehicles to legitimate dealers because there is not the additional impost of cost of servicing warranties which are essentially a very short-term warranty. I think it is a month or 3,000 kilometres travelled post purchase.

CHAIR: So you are effectively asking licensed dealers to get involved in that market to help consumers?

Mr Brown: Yes.

CHAIR: Leah, I would like to ask you a question but I am not sure what area you deal in.

Ms Coar: I am not feeling left out.

CHAIR: I am just wondering whether we have actually come very close to the end of our questioning.

Mr MULHERIN: A question to Mr Ford. Has there been any discussion with the CMC about the involvement of organised crime in debt collection? I think there was some recent media around it. On the one hand, Ms Smith was saying in relation to another question when it came to judicial review that it was consistent with the organised crime gang legislation that the government has focused on. There are some recent reports—I will find a media release I have here—where a Hell's Angel person was involved in a debt-collecting business. His wife was also a solicitor and she got someone to go and collect money. Why has that not been picked up in this bill? One element of the bill in relation to judicial review focuses in on organised crime gangs, but when we know that there is organised crime involved in debt collecting why do provisions in the bill not reflect the government's concerns around that when they have looked at other occupations?

Mr Ford: The CMC has not raised the issue of the debt collectors legislation with us as one of those that needed those sorts of amendments put into it.

Mr MULHERIN: So they do not have any concerns about organised crime being involved in debt collection, even though it has been reported in their publications and in Australian Crime Commission publications?

Mr Ford: That is a question you would have to ask them rather than us. The second thing is that—I will reiterate what Shayna Smith said earlier—the anecdotal evidence suggests that a lot of the debt collection activities that are carried out by criminal motorcycle folk and associates would not be covered by this legislation. So I am not sure that we would be delicensing people who were not covered by the legislation or who have not applied for licensing under the legislation.

Mr MULHERIN: It is just that there was this article in the *Courier-Mail* on 24 November—

A Hell's Angel's wife used her own law firm to help broker sham loans to claw back drug debts from customers of her husband and his twin brother, it is alleged in court papers.

I table that.

CHAIR: I think it is effectively under the Criminal Code, I suspect. I am happy for you to take that away. I can give this article to you to take away and make a response, but I think I know the answer.

Mr Ford: I certainly have no problem with taking it away and providing a formal response to the committee, but I think it will just be what we have already said.

CHAIR: I would not use them. Dare I say, it will cost an arm and a leg! I will give that to you and you can perhaps make a response in due course. I think I know where it is going.

Public Briefing—Inquiry into the Property Occupations Bill 2013; Motor Dealers and Chattel Auctioneers Bill 2013; Debt Collectors (Field Agents and Collection Agents) Bill 2013; Agents Financial Administration Bill 2013; & Fair Trading Inspectors Bill 2013

There being no further questions, we will end this public briefing. I thank all witnesses and advisers for their attendance and the information provided. I thank the members of the public for their interest in the work of the committee. I remind the public that the committee is calling for submissions on the bills by Friday, 17 January 2014. I advise that the committee is holding a public hearing with invited stakeholders on Thursday, 6 February 2014. I now declare the committee's public briefing for the examination into these bills closed.

Committee adjourned at 3.43 pm