

Motor Dealers and Chattel Auctioneers Bill 2013

Report No. 52

Legal Affairs and Community Safety Committee

February 2014

Legal Affairs and Community Safety Committee

Chair	Mr Ian Berry MP, Member for Ipswich
Deputy Chair	Mr Peter Wellington MP, Member for Nicklin
Members	Miss Verity Barton MP, Member for Broadwater Mr Bill Byrne MP, Member for Rockhampton Mr Sean Choat MP, Member for Ipswich West Mr Aaron Dillaway MP, Member for Bulimba Mr Trevor Watts MP, Member for Toowoomba North
Staff	Mr Brook Hastie, Research Director Ms Kate McGuckin, Research Director Ms Rachelle Stacey, Principal Research Officer Mrs Gail Easton, Executive Assistant
Technical Scrutiny Secretariat	Mr Peter Rogers, Acting Research Director Mr Karl Holden, Principal Research Officer Ms Tamara Vitale, Executive Assistant
Contact details	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7307
Fax	+61 7 3406 7070
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

Contents

Abbreviations	iv
Chair's foreword	v
Recommendations	vi
1. Introduction	1
1.1 Role of the Committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Motor Dealers and Chattel Auctioneers Bill 2013	1
1.4 Consultation	2
1.5 Should the Bill be passed	3
2. Examination of the Motor Dealers and Chattel Auctioneers Bill 2013	4
2.1 Background to the Bill	4
2.2 Red tape reduction	6
2.3 Chattel Auctioneer licence (spilt in authorisations of auctioneering functions)	14
2.4 Improve the operation of the legislation	17
2.5 Combating the threat of criminal motorcycle gangs	22
3. Fundamental legislative principles	24
3.1 Explanatory Notes	24
Appendix A – List of Submissions	25
Appendix B – Schedule of Witnesses at the Public Hearing	26
Statement of Reservation	27

Abbreviations

ACL	Australian Consumer Law
ALPA	Australian Livestock and Property Agents Association Ltd
Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Motor Dealers and Chattel Auctioneers Bill 2013
BMA	Brisbane Motor Auctions
Committee	Legal Affairs and Community Safety Committee
Department	Department of Justice and Attorney-General
MTAQ	Motor Trades Association of Queensland
NOLS	National Occupational Licensing System
PAMD Act	<i>Property Agents and Motor Dealers Act 2000</i>
RACQ	The Royal Automobile Club Queensland Limited
SDPC	Service Delivery and Performance Commission

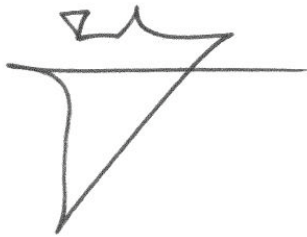
Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Motor Dealers and Chattel Auctioneers Bill 2013.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, and the Department of Justice and Attorney-General.

I commend this Report to the House.

A handwritten signature in black ink, consisting of a stylized 'I' and 'B' with a horizontal line extending to the right.

Ian Berry MP

Chair

Recommendations

Recommendation 1 **3**

The Committee recommends the Motor Dealers and Chattel Auctioneers Bill 2013 be passed.

Recommendation 2 **18**

The Committee recommends the Bill be amended to ensure the method for determining vehicle age, as part of defining a 'warranted vehicle', is clearer and applicable to a full range of vehicle labelling types.

Recommendation 3 **19**

The Committee recommends the Bill be amended to include an explanatory statement to clarify the interpretation of clauses 96 and 142.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Motor Dealers and Chattel Auctioneers Bill 2013 (Bill) was introduced into the House and referred to the Committee on 20 November 2013. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 24 February 2014.

1.2 Inquiry process

On 28 November 2013, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill. It also invited stakeholders and subscribers to lodge written submissions and issued a media release announcing its inquiry.

The Committee received written advice from the Department and received six submissions (see **Appendix A**).

A public briefing was held on 12 December 2013, where the Committee took evidence from representatives from the Department on the initiatives being pursued in the Bill. A copy of the transcript of the briefing can be accessed on the Committee's website.

On 6 February 2014, a public hearing was held and the Committee received further oral submissions from a number of invited witnesses (see **Appendix B**). A copy of the transcript of the hearing can be accessed on the Committee's website.

1.3 Policy objectives of the Motor Dealers and Chattel Auctioneers Bill 2013

The objectives of the Bill are to:

- *Contribute to the repeal and split of the Property Agents and Motor Dealers Act 2000 into four separate Acts, with an Act to comprehensively provide for the regulation of the activities, licensing and conduct of motor dealers, chattel auctioneers and their employees and to protect consumers against particular undesirable practices.*

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

- *Reduce red tape and regulatory burden for motor dealers and chattel auctioneers.*
- *Improve the operation of the legislation for the motor dealing and chattel auctioneers sectors.*
- *Address the preference of the auctioneering industry that all auctioneering functions remain authorised by licence.*
- *Prevent identified participants of criminal organisations from holding or obtaining motor dealer licences or registration certificate.²*

The Attorney-General in his introductory speech advised that the motor dealing and chattel auctioneering sectors in Queensland will continue to be regulated so that '*levels of consumer protection and professional standards in these sectors remain high*' - and that this is supported by '*legitimate businesses in these sectors*'.³ The Bill will ensure:

... that both motor dealers and chattel auctioneers meet appropriate training, suitability and conduct requirements given the potential impact on consumers and other businesses of unsuitable or unqualified operators in these sectors.

And:

... provide a system for licensing and regulating persons as motor dealers and chattel auctioneers and for registering and regulating persons as motor salespersons that achieves an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace.⁴

The objectives of the Bill align with the Queensland Government's commitment to address serious community concern about recent incidents of violent, intimidating and criminal behaviour of participants of criminal motor cycle gangs, as well as their infiltration into the used motor dealing industry.

1.4 Consultation

As set out in the Explanatory Notes, extensive consultation has been undertaken over several years regarding splitting PAMD into several industry-specific Bills, including:

- the Queensland Government's Service Delivery and Performance Commission's (SDPC) regulatory reform review in 2008;
- a working group, comprised of representatives of key industry associations, was consulted and broad public consultation was also undertaken throughout the development of the 2010 draft Bills; and
- in 2011 the draft Bills were referred to the former Legal Affairs, Police, Corrective Services and Emergency Services Committee which called for public submissions and held two public hearings in its examination of the Bills.

The Queensland Government undertook a comprehensive red tape reduction review of the draft Bills to split the PAMD Act into four separate pieces of legislation was conducted in 2013. In February of that year a six week public consultation process was undertaken to identify opportunities to reduce red tape and regulation without adversely affecting consumers. Over 86 stakeholder submissions were received and 47 of those submissions included over 30 different categories of proposal in

² *Explanatory Notes, Motor Dealers and Chattel Auctioneers Bill 2013, page 1.*

³ *Record of Proceedings (Hansard), 20 November 2013, pages 4059-60.*

⁴ *Record of Proceedings (Hansard), 20 November 2013, pages 4059-60.*

relation to the regulation of motor dealers and chattel auctioneers. Many of the suggestions submitted that aligned with the Government's objective of reducing regulation and red tape were adopted and incorporated into the Bills.⁵

In October 2013, the Department undertook targeted consultation on an exposure draft of the amended Bill. Stakeholder feedback to the amendments was considered by the Department to be generally positive, although the auctioneering sector did not support the effective split of auctioneering functions across two different licenses. Further amendments to improve the operation of the provisions and the Bill were subsequently made before this Bill was introduced into the Legislative Assembly.⁶

1.5 Should the Bill be passed

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

The Committee considers the policy objectives being pursued by this Bill reflect the strong support amongst industry stakeholders. In particular, the Committee considers the Bill will improve the operation of the legislation, clarify particular provisions and will bring welcome reduction in regulatory burden for the motor dealing and chattel auctioneers sectors while maintaining appropriate consumer protections.

The Committee therefore makes the following recommendation.

Recommendation 1

The Committee recommends the Motor Dealers and Chattel Auctioneers Bill 2013 be passed.

⁵ *Explanatory Notes, Motor Dealers and Chattel Auctioneers Bill 2013, page 27.*

⁶ *Explanatory Notes, Motor Dealers and Chattel Auctioneers Bill 2013, page 27.*

2. Examination of the Motor Dealers and Chattel Auctioneers Bill 2013

This section provides a background to the Bill and discusses issues raised during the Committee's examination of the Bill.

2.1 Background to the Bill

In his introductory speech on 20 November 2013, the Attorney-General stated:

Industry has long been calling for a reduction in red tape and for the cumbersome and complex Property Agents and Motor Dealers Act 2000 to be split into separate, industry-specific pieces of legislation.⁷

The Attorney-General introduced a suite of four inter-related Bills on 20 November 2013 to replace the *Property Agents and Motor Dealers Act 2000* (PAMD). The suite includes three industry-specific Acts, 'supported by a financial administration act containing common trust account obligations and claim fund provisions applying across the industry-specific acts'⁸: The four Bills are:

- 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

Property Agents and Motor Dealers Act 2000

The PAMD Act was introduced into Parliament on 7 September 2000 and came into effect on 1 July 2001. The PAMD Act provides for:

- an occupational licensing and conduct framework for businesses and individuals operating in the real property sector (for example real estate agents and salespeople), as well as auctioneers, used motor dealers, debt collectors and process servers;
- consumer protection provisions regarding residential property sales (particularly in relation to pre-contractual disclosure); and
- a claim fund designed to compensate consumers who suffer loss as the result of particular actions of licensees.⁹

The first amendment to the Act commenced on 21 September 2001,¹⁰ indicating that refinements to the legislation were required even in its infancy. The Act has been extensively modified over many years, including via four substantial pieces of amending legislation, resulting in legislation which is renowned as being 'a large and cumbersome piece of legislation.'¹¹

In correspondence to the Committee the Department noted:

While the PAMD Act serves a number of important policy purposes, over time it has become increasingly voluminous and difficult to navigate. It has also been characterised by increasing levels of complex and technical regulations, which in some cases, may be a disproportionate or ineffective response to the policy problems they seek to resolve. The

⁷ *Record of Proceedings (Hansard)*, 20 November 2013, page 4056.

⁸ *Record of Proceedings (Hansard)*, 20 November 2013, page 4060.

⁹ Letter from the Department of Justice and Attorney-General, 9 December 2013. page 1.

¹⁰ Reprint 1A, Act 61 of 2001.

¹¹ *Rowley v Abacus Associates Pty Ltd* [2013] QCATA 206, per Stilgoe OAM, at 18.

PAMD Act has also resulted in a 'one size fits all' legislative framework, which is limited in its capacity to deal with industry-specific issues in a tailored, responsive way. For instance, industries such as debt collection are currently regulated in legislation that is largely designed to deal with issues arising in the real property sector.¹²

History of review of the PAMD Act¹³

In 2008 the former SDPC conducted a Review of Regulatory Reform. In its 'Report on the Review of Regulatory Reform (Phase 2) – *Property Agents and Motor Dealers Act 2000*', the SDPC concluded:

... a significant reduction in the level of regulation could be achieved without adversely affecting consumers. The reductions were anticipated to be of significant benefit to the businesses affected by the Act and a number of the SDPC recommendations were considered likely to have positive benefits for consumers.

In 2010, the former Government introduced draft Bills (the 2010 draft Bills) to implement a number of recommendations of the SDPC. The four Bills were referred to the former Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC) on 17 June 2011. The Committee reported back to the Parliament on 3 October 2011 making a number of recommendations, including the 2010 Bills be passed. However, the 2010 draft Bills lapsed upon the dissolution of the 53rd Parliament in February 2012.

As outlined under the 'Consultation' section of the report, following the lapse of the 2010 draft Bills, the Government conducted a red tape reduction review on the draft Bills in 2013 and incorporated a number of the suggestions to improve the operation of the Bills.

New legislative framework

The suite of 2013 Bills are intended to:

... deliver a contemporary legislative framework that is responsive to the needs of the industries regulated under the Property Agents and Motor Dealers Act 2000 and that promotes growth, innovation, creativity and productivity.¹⁴

The Bills seek to establish this framework in two ways:

- i) the Bills repeal and split the PAMD Act into three industry-specific Acts (refer to the Property Occupations Bill, Motor Dealers and Chattel Auctioneers Bill and Debt Collectors (Field Agents and Collection Agents Bill)) supported by a financial administration Act (refer to the Agents Financial Administration Bill) which contains common trust account requirements and claim fund arrangements that will apply across the industry-specific Acts, and
- ii) the Bills significantly simplify and reduce the regulatory requirements currently contained in the PAMD Act for the licensed industries (including in relation to residential property sales), and streamline the investigation and decision making processes for consumer claims made against the claim fund.¹⁵

¹² Letter from the Department of Justice and Attorney-General, 9 December 2013. page 1.

¹³ Letter from the Department of Justice and Attorney-General, 9 December 2013. page 1.

¹⁴ Record of Proceedings (Hansard), 20 November 2013, page 4056.

¹⁵ Letter from the Department of Justice and Attorney-General, 9 December 2013, pages 1-2.

Legislative reform objectives

The overarching objectives of this legislative reform are to reduce red tape and improve the regulatory framework for the licensed industries while maintaining effective consumer protections.¹⁶ The Department anticipates that:

*Industry groups will benefit from having legislation and obligations that are specific to their line of business. In addition, industry-specific Acts will mean future legislative reforms will be more responsive to marketplace changes in each industry. This is anticipated to lead to increased industry standards, simplified compliance and increased consumer confidence in the regulated industries.*¹⁷

2.2 Red tape reduction

Simplification of statutory warranty provisions

Statutory warranties under the PAMD Act apply differently to three classes of warranted vehicle: class A, class B and restorable. The class is determined on age and kilometres travelled, and the statutory warranty provided for each class was originally designed to reflect reasonable expectations of the reliability of vehicles depending on those factors.

The requirement to provide statutory warranties for objectively older and lower value vehicles has been identified as an impediment to the viable legal sale of these vehicles. The statutory warranty for particular defects for a class B vehicle (travelled over 160,000 kilometres or more than 10 years old) applies up until the earliest of 1,000 kilometres travelled or one month expired after purchase. These requirements have been linked to the prevalence of illegal dealings in older vehicles where obligations to provide consumer protections such as statutory warranty and cooling off periods are avoided.¹⁸

The Bill provides statutory warranties must only be provided for the current class A definition (no more than 10 years old, and has travelled less than 160,000 kilometres). The Explanatory Notes state:

*It is expected that the removal of statutory warranties for older vehicles will increase the viability of their legitimate sale by motor dealers, which will result in fewer illegal sales, broader application of cooling-off periods, and fewer irregularities in ownership transfer.*¹⁹

At the public briefing the Office of Fair Trading further advised 'by removing the warranty, we are hoping that it will actually shift the trade of 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.'²⁰

¹⁶ Letter from the Department of Justice and Attorney-General, 9 December 2013, page 2.

¹⁷ Letter from the Department of Justice and Attorney-General, 9 December 2013

¹⁸ *Explanatory Notes*, Motor Dealers and Chattel Auctioneers Bill 2013, page 4.

¹⁹ *Explanatory Notes*, Motor Dealers and Chattel Auctioneers Bill 2013, page 4.

²⁰ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 12 December 2013, page 14.

The Royal Automobile Club Queensland Limited (RACQ) notes the Government's desire to reduce red tape and regulatory burden but was of the view that this should not come at the expense of consumer protection or increased financial burden for customers; and that the removal of the statutory warranty for class B vehicles will give buyers even less reason to buy older vehicles from a licensed Motor Dealer:

RACQ is very concerned that the removal of the Statutory Warranty provisions for vehicles more than 10 years old or that have travelled more than 160,000 kms is a significant reduction in the level of consumer protection the existing Act provides, and appears to be counter to the original Act's intent that the cover afforded would reflect reasonable expectations of a vehicle's reliability based on its age and distance travelled....

While we understand that providing Statutory Warranty cover on an older vehicle adds to a Motor Dealer's costs, and that these vehicles, due to their age and distance travelled, are more likely to have issues, the fact is that the removal of protection will merely, in the event of a failure, move the cost burden from the dealer, who has the ability to amortise the costs over a larger number of sales, to the vehicle buyer who has to absorb the entire costs.

This change has the potential to increase the cost of motoring to buyers of this type of vehicle, without, we believe, a corresponding reduction in the asking price of these vehicles to off-set it....

Rather than reducing the protection afforded to buyers, as this Bill proposes, it is in the interests of both consumers and the industry to enhance the motivation to deal with licensed Motor Dealers. Without the perceived protection of the class B Statutory Warranty, there is even less reason to encourage a consumer to buy from a licensed Motor Dealer, and this could result in buyers being further disadvantaged due to the lack of regulation relating to non-dealer sales.²¹

Further, the RACQ advised the Committee it does not believe that other suggested consumer guarantees, which were discussed at the public hearing (6 February 2014), such as a Safety Certificate and the Australian Consumer Law (ACL), can be considered as substitutes for a statutory warranty.²² The RACQ clarified that a Safety Certificate inspection is 'primarily a safety check', 'it does not, and is not required to, identify many of the common mechanical issues that arise in used vehicles', and where an Approved Examiner fails to identify a fault, 'they can be prosecuted by the Queensland Government for breaching the legislation, however even if found guilty, they are under no obligation to repair the fault'.²³

The RACQ believes that compared to a statutory warranty, the ACL is 'much less prescriptive and more nebulous in its nature' and believe that it offers 'less protection to both consumers and the industry'.²⁴

RACQ also does not believe that class B vehicles are "typically low-value motor vehicles" and "not a lot of money in them" and that those selling such vehicles "generally get offered scrap prices for them". RACQ advised that 'a simple web search for vehicles for sale by Queensland motor dealers will show that vehicles meeting class B criteria can have prices as high as \$50,000 while a significant proportion are priced in excess of \$10,000'.²⁵

²¹ The Royal Automobile Club Queensland Limited, Submission No.3, pages 2-3.

²² Letter from The Royal Automobile Club Queensland Limited, 11 February 2014, pages 1-2.

²³ Letter from The Royal Automobile Club Queensland Limited, 11 February 2014, pages 1-2.

²⁴ Letter from The Royal Automobile Club Queensland Limited, 11 February 2014, pages 1-2.

²⁵ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 6 February 2014, page 5.

The Motor Trades Association of Queensland (MTAQ) disagreed with the Department's stated expectation that the removal of the statutory warranty requirements for older vehicles would increase the viability of their legitimate sale by motor dealers, resulting in fewer illegal sales, broader application of cooling-off periods and fewer irregularities in ownership transfer:

...our Members, with practical experience hold a different view. It is their expectation that the 'low value vehicles' may be the target for unlicensed backyard traders to the detriment of the consumer.

We have resolved with this specific policy measure to reserve our support and to adopt a 'wait and see' approach.²⁶

Brisbane Motor Auctions (BMA) also raised concerns about the removal of the statutory warranty on older vehicles:

Under the proposed Act there is definitely no protections for consumers, removing the warranty provisions does not make it easier to acquire or retail these vehicles, the Licenced legitimate dealer will still have to provide a Safety Certificate and all the traditional consumer protections that is afforded a buyer, back yarders and unlicensed operators will continue to subvert their responsibilities. The only way to protect the consumer is to ensure that vehicles are retailed from licenced commercially approved premises.²⁷

The Department responded to the concern by some submitters that the proposed removal of statutory warranty requirements for class B vehicles would diminish consumer protection:

The measure was in part introduced to reduce red tape for motor dealers, by simplifying statutory warranty requirements in line with an MTAQ proposal. Justification for the measure was also provided by recommendations made by the former Service Delivery and Performance Commission's review of the PAMD Act. The review, conducted with substantial input from stakeholders and regulators alike, stated that the measure would "benefit owners of older vehicles, who will have better prospects of trading in the vehicle to a motor dealer. (Under the current arrangements motor dealers may only be willing to purchase the vehicle at scrap value). This proposal will also move older used vehicles back to motor dealers (instead of 'backyard' operators), which will benefit buyers as the statutory consumer protections under PAMDA only apply to motor dealer sales."²⁸

To the extent that a proportion of consumers currently purchase older vehicles from unlicensed dealers or licensed dealers posing as private sellers, the removal of the class B warranty is irrelevant. Any move to legitimate sales of these vehicles should benefit consumers through at least the provision of cooling-off periods and guarantee of title. It should however be noted that submissions received by the committee query whether the removal of statutory warranty requirements for class B vehicles will have the intended effects on legitimate sales of these vehicles.

RACQ highlight that class B warranties might apply to relatively new vehicles that have travelled more than 160,000 km, and that these vehicles may still attract a relatively higher sale price. The use of both age and kilometres travelled in conjunction to define a warranted vehicle recognises the impact both factors can have on expected reliability. The market value of the vehicle however is not a factor in determining whether the statutory warranty applies, either under the PAMD Act, or the Bill. Older luxury cars might similarly achieve higher sale prices despite comparable expectations of reliability.

²⁶ Motor Trades Association of Queensland, Submission No. 4, page 2.

²⁷ Brisbane Motor Auctions, Submission No. 1, page 2.

²⁸ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 14.

Buyers of class B vehicles also have recourse to consumer protections outside the PAMD Act or the Bill. The Australian Consumer Law (ACL) provides a system of consumer guarantees that applies to purchases of used motor vehicles from motor dealers, including but not limited to guarantees of acceptable quality and fitness for purpose. These guarantees are not limited to a specific period after purchase, but rely on consideration of elements such as age, price and condition of the goods. An example provided in the ACL guide for business and legal practitioners demonstrates the coverage of these guarantees: "A consumer buys a second-hand washing machine for \$250 from a shop. The supplier said it was two years old and in good condition but it breaks down after two months. A reasonable consumer would expect to get more than two months' use from this machine. The consumer would be entitled to a remedy from the supplier."

Clearly consumer guarantees provide a means to seek remedy when problems occur with older vehicles, that is not limited to the narrow parameters for which statutory warranties apply to class B vehicles under the PAMD Act (earlier of 1000km or 1 month).²⁹

Committee Comment

The Committee has considered the concerns raised by some submitters who do not support the Bill's proposal to remove the statutory warranty provisions for a class B vehicle. Key concerns raised include: diminished consumer protection; likely negligible impact on illegal dealings of class B vehicles; and the potential for some relatively new vehicles to be categorised as a class B vehicle.

The Committee supports the removal of the statutory warranty provisions for a class B vehicle and it is of the view that it will not diminish protection for consumers. Rather, the Committee considers that the intent of the proposal is to reduce illegal dealings in older vehicles where obligations to provide consumer protections, such as the provision of cooling-off periods and guarantee of title, are avoided.

On balance, the Committee considers that the consumer guarantee for particular defects for a class B vehicle has; in general, relatively limited coverage of 1,000 kilometres travelled or one month expired after purchase. The Committee recognises that a safety certificate, which covers basic things that could affect the safe operation of the vehicle, is not a replacement for a statutory warranty. However, the Committee notes the Department's advice that buyers of class B vehicles will have recourse to consumer protections under the ACL, which provides coverage of consumer guarantees to purchasers of used motor vehicles from motor dealers. Importantly, the guarantee coverage includes but is not limited to guarantees of acceptable quality and fitness for purpose, and relies on consideration of elements such as age, price and condition of the goods.

Removing the costs associated with a statutory warranty for a class B vehicle may also give owners of older vehicles better prospects to trade in the vehicle to a motor dealer (rather than the motor dealer offering to purchase the vehicle at scrap value).

While acknowledging that some class B vehicle warranties may apply to relatively new vehicles, the Committee believes it is reasonable to expect consumers to gauge the expected reliability of a vehicle based on both age and kilometres travelled. It also follows; a more expensive class B vehicle would expect a negotiated warranty.

The Committee notes that the Bill's proposal to simplify statutory warranty requirements is consistent with the broader government policy objectives to reduce regulation and red tape and based on the above, the Committee is supportive of the Bill's proposed removal of the statutory warranty provisions for a class B vehicle.

²⁹ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, pages 14-15.

Placement of statutory warranty provisions in the Bill

In its submission, the Caxton Legal Centre suggested the statutory warranty provisions, which are currently located in schedule 1 of the Bill, would be better placed in the body of the Bill.³⁰

The Committee is satisfied with the Department's response that the placement of these provisions reflects Office of the Queensland Parliamentary Council drafting practices and results in a single set of provisions for shared reference by both the motor dealer (clause 115) and chattel auctioneer (clause 145) parts of the Bill that avoids duplication.³¹

Unlicensed motor vehicle dealers

The MTAQ believed the Bill should include a number of additional requirements in relation to motor dealer's licences. It submitted the Bill errs on the *'noble side of red tape reduction rather than the consumer'* and was concerned that its members regularly have *'to pick up the pieces'* for an unwary consumer caught with a defective motor vehicle by purchasing with an unscrupulous *'backyard'* used motor vehicle trader. They argue the Bill should include:

- *a legislative requirement for individuals or businesses selling new or used motor vehicles to operate from a Council-approved business premises*
- *a requirement for Dealers to include their License numbers with car advertisements in order to identify 'dealer' sales from 'private' sales and allow consumers to check the dealer's legitimacy against the Office of Fair Trading*
- *a requirement for motor dealers registering for Auctions to produce photographic identification with their dealer's license to advance transparency.*³²

Mr Kennedy, the Principal and Licensee of BMA, agreed, submitting the proposed Bill provides very little protection for consumers. He recommended that the proposed licensing process for motor dealers should exclude persons who do not have the following requirements:

- *... suitable automotive experience;*
- *... licenced commercial premises;*
- *... financial viability;*
- *... trade and or current automotive references;*
- *... completed competency in MTAQ certified module training.*³³

Requirement to operate from a Council-approved business premise

In relation to the issue raised by some submitters that the Bill should require individuals or businesses selling new or used motor vehicles to operate from a Council-approved business premises, the Committee is satisfied with the Department's advice:

An approved premises clause is not likely to reduce consumer detriment caused by unlicensed traders, or traders illegally using a licence that is not theirs. Removing the capacity for some 'backyard' dealers to become licensed may merely result in an increase in unlicensed dealer activity.

³⁰ Caxton Legal Centre, Submission No. 6, page 5.

³¹ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 15.

³² Motor Trades Association of Queensland, Submission No. 4, page 2.

³³ Brisbane Motor Auctions, Submission No. 1, page 1.

A key element of the PAMD Act split process is to ensure the licensing requirements in each new Act are relevant to determining whether an individual is eligible and suitable to be licensed. It is clearly a concern for local government whether traders are conducting their business in an appropriate locale, and it is also the responsibility of local government to take action in the event that the use is inappropriate. It is contrary to the red tape reduction objective of the Bill for the Government to take on a duplicative responsibility for oversight and regulation of the appropriateness of business activities by locale through the requirements of an occupational licensing regime.

*In practical terms, demonstrating local government approval of premises to operate as a motor dealer may be difficult for some legitimate traders and generally difficult or time consuming for staff of the Office of Fair Trading to appropriately assess as part of a licence application, as has been demonstrated historically. The requirement would be an additional barrier to entry for prospective licensees yet to secure employment.*³⁴

Photographic identification display by licensees

Submitters, in general, were concerned that unlicensed dealers are able to source vehicles through dealer only auctions, by sharing licences or perhaps registering without being required to produce a licence. As a solution, some submitters have suggested the Bill should require individuals or businesses selling new or used motor vehicles to display photographic identification when conducting business, including attendance at auctions. The Committee notes the Department's detailed advice, in particular:

In general, the Bill proposes that motor dealers be required to display or provide photographic ID when conducting business.

Dealer only auctions are not specifically regulated in either the PAMD Act or the Bill. These auctions are provided by auction houses to facilitate sales to dealers, as certain consumer protection elements of the legislation relevant to used vehicles such as statutory warranties do not apply.

If particular auction houses do not appropriately ascertain the identity of dealers (perhaps to maximize their client base) it is unclear how requiring photo ID display will address the problem, since it would appear that they are not complying with existing requirements (and requirements under the Bill) to establish identity that are backed by penalties for non-compliance. Further, efforts on the part of the Office of Fair Trading to work with auction houses to ensure that legislative requirements are complied with, and enforcement action in the event that they are not, would seem an appropriate means to address any problems in this area that would avoid adding further prescriptive elements to the legislation.

The broader proposal is that dealers be required to wear a photo ID based licence or registration certificate when conducting any business as a motor dealer or motor salesperson. The two elements of this proposal are issuing photo ID based licences and registration certificates, and requiring display of these at all times.

As it stands, the Bill (and PAMD Act) provides that motor dealers and motor salespersons must produce their licence for inspection if asked to do so by a person they are dealing with, with a penalty of 100 units for non-compliance (cl. 75 and cl. 189). Those dealing with motor dealers are within their rights to ask for supporting ID, and to choose not to deal with a trader in the event it is not forthcoming or does not match the licence.

³⁴ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, pages 1-5.

The Bill also requires licences and registration certificates be kept available for inspection at each relevant place of business of the licensee or certificate holder (e.g. cl. 65), with the same penalty for non-compliance. This replaces the PAMD Act requirement that principal licensees must display their licence in the way prescribed under regulation at their registered office.

It would seem unlikely that a licensed dealer posing as a private seller would comply with photo ID display requirements when dealing with consumers. The impact on auction registration as discussed would likely be minimal assuming the issue concerns particular auction houses that do not seek to establish the identity of registered bidders. It is anticipated that auction houses will be required under the Bill and regulations to establish identity (as under the PAMD Act), and it is possible to do so effectively by using existing forms of identification.

Photo ID based licences and registration certificates would add to costs of licensing and registration and the additional licence display prescription is at odds the red tape reduction premise of the Bill (and other PAMD Act split Bills).³⁵

Dealers licence numbers to be displayed in advertisements

The MTAQ proposes the Bill should include a requirement for dealers to include their licence numbers with car advertisements in order to identify 'dealer' sales from 'private' sales and allow consumers to check the dealer's legitimacy against Office of Fair Trading licence information.

The Department advised:

The primary channel for used vehicle advertising is the internet. The majority of online car sales sites specifically identify dealer advertisements, and routinely provide a dealer licence number with those advertisements. Some sites limit dealer information to a business name. In many cases these details are provided in small font size at the bottom of the page rather than being prominently displayed within the advertisement.

It is unlikely that the measure would have appreciable impact on activities where a licensed dealer acts as a private seller to avoid the requirements of the legislation. These traders presumably avoid having their advertisements being listed as dealer sales to avoid expectations that statutory warranties and the like will be provided.

The measure may assist in the identification of unlicensed dealers promoting themselves to the public as licensed dealers, although given a motivation to avoid legislative requirements would lead to the opposite behaviour, the net impact may be limited. It should also be noted that the Office of Fair Trading licence register already allows consumers to search online by name, business name or licence number to determine whether a trader is a legitimate licensee.

However the measure may assist Office of Fair Trading enforcement action, given displaying a fake or copied licence number could support a charge of acting as a motor dealer without licence (cl. 119). Similarly the requirement might aid establishment of an enforcement basis where licensed dealers omit their licence numbers in an effort to pose as private sellers.

³⁵ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, pages 8-10.

*While it is contrary to the red tape reduction aims of the Bill, the measure would not be a particularly onerous addition to regulatory obligations on motor dealers. The primary cost burden of the measure would be felt by traders advertising in print media, where costs are largely based on advertising space. The effect on online advertising costs would be insignificant.*³⁶

At the public briefing the Department explained why these additional requirements are not incorporated in the Bill:

*One theme that emerged in some submissions, particularly from the used motor vehicle sector, was that stakeholders were advocating for increases in the restrictions 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 the 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 the industry itself or through enforcement of existing laws.*³⁷

Committee Comment

The Committee has considered the proposed range of suggestions for additional requirements for the licensing of motor dealers. These include requirements to demonstrate automotive experience, local government approval of business premise, assessment of financial viability, trade/automotive reference, competency in MTAQ certified training, criminal history checks for all directors, retention of criminal licence provisions of the PAMD Act, and a requirement for automotive auctioneers to hold a motor dealer licence.

The Committee is satisfied with the Department's reasons why these additional requirements are not incorporated in the Bill, including that regulatory burden is inconsistent with the policy objectives of the Bill as well as with the broader government policy to reduce regulation and red tape, and that a number of proposals for increased regulation could be addressed by the industry itself or through enforcement of existing laws.

More broadly, the Committee is aware of the prevalence of unscrupulous 'backyard' traders who are not complying with consumer protection requirements such as statutory warranty, cooling-off periods, appropriate provision of title to the motor vehicle, to the detriment of some used motor vehicle buyers.

Licensing requirements for directors of corporations

The BMA would like licensing requirements for directors of corporations removed.³⁸ Under the PAMD Act, for a corporation to be eligible for a motor dealer licence or an auctioneer licence, a director of the corporation must hold the same class of licence.

The Department advised that:

...under the Bill, this requirement has been relaxed and allows a corporation to be eligible for a motor dealer or chattel auctioneer licence if a person in charge of the corporation's business holds the same class of licence.

³⁶ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, pages 10-11.

³⁷ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 12 December 2013, page 3.

³⁸ Brisbane Motor Auctions, Submission No. 1, page 2.

*This requirement is a reasonable means to ensure a licensee is involved in the governance and management of the corporation, given that the corporation is authorised to perform and delegate the functions of that licence.*³⁹

Committee Comment

The Committee notes the Department's clarification in relation to the licensing requirements for directors of corporations.

2.3 Chattel Auctioneer licence (spilt in authorisations of auctioneering functions)

A 2008 review of the PAMD Act recommended that the auctioneer licence be removed, with real estate agents provided authorisation to auction real property, motor dealers provided with authorisation to auction motor vehicles, and other types of auctions subject to certain conduct requirements but no licensing requirements.⁴⁰

The Explanatory Notes state that the auctioneering industry has a strong preference for chattel auctioneering to remain as a licensable activity despite the potential benefits that might be realised by de-licensing the activity and reducing costs and red tape for sector participants. The Explanatory Notes state that:

*Stakeholders believe that the existing licensing framework prevents unsuitable persons from entering the industry and ensures high standards of professional practice.*⁴¹

The Australian Livestock and Property Agents Association Ltd (ALPA) supported this approach in its submission:

*ALPA was and still is a strong advocate for maintaining a licence for all auctioneering functions and is grateful that a licensing framework for chattel auctions has been re-instated.*⁴²

However, the decision to split the PAMD Act into industry specific Bills requires a spilt in authorisations of auctioneering functions across the Property Occupations Bill 2013 for auctioneers of real property and this Bill for chattel auctioneers authorised to auction goods including livestock and motor vehicles. The Explanatory Notes state:

*The rationale for combining licensing and conduct regulation for the chattel auctioneer and motor dealer sectors within this Bill is based largely on the overlap in requirements across licenses for sales of motor vehicles, particularly in terms of statutory warranty requirements, as well as the comparability of eligibility and suitability of the licensing framework.*⁴³

ALPA does not support the proposed segregation of the practice of auctioneering into industry specific Acts on the basis that the requirement for the livestock and property auctioneer profession to hold two auctioneer licenses can only result in increased red tape, costs and regulatory burden for licensees, their companies and the government.⁴⁴ ALPA argued:

An auctioneer is an auctioneer and should not be defined by what is being auctioned.

³⁹ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 7.

⁴⁰ Letter from the Department of Justice and Attorney-General, 10 December 2013, page 9.

⁴¹ *Explanatory Notes*, Motor Dealers and Chattel Auctioneers Bill 2013, page 2.

⁴² Australian Livestock and Property Agents Association Ltd, Submission No. 2, page 5.

⁴³ *Explanatory Notes*, Motor Dealers and Chattel Auctioneers Bill 2013, page 3.

⁴⁴ Australian Livestock and Property Agents Association Ltd, Submission No. 2, page 3.

As the peak industry body representing auctioneers who auction both livestock (chattels) and property (real estate), ALPA is extremely disappointed that our continued objection to the introduction of a dual auctioneer licensing regime has been ignored. What is more concerning is the perceived lack of understanding as to the number of existing auctioneers this will impact.....

As livestock and property auctioneers, the very nature of the business necessitates these auctioneers to act in the dual capacity as property (real estate) and livestock (chattels) auctioneers. It is not a question of which auctioneers licence they would retain... for the licences are mutually exclusive. The dual licensing proposal is akin to suggesting a doctor must hold separate licences for the top of the body and the bottom of the body.....⁴⁵

ALPA goes on to argue that the proposed licensing fee concession implies that cost may be the only negative impact for dual licences and that this is incorrect. They note that other negative impacts are likely to include:

- some training organisations may manipulate the system and introduce two training structures for the respective licences which will increase costs;
- existing licence holders will be burdened with the ongoing renewal of two licences with potentially different renewal dates; and
- livestock and property auctioneers will need to be familiar with the requirements of two separate pieces of legislation to conduct one professional activity.⁴⁶

ALPA also has concerns about the ability for future legislative amendments to be uniformly carried across to the respective separate pieces of legislation, to ensure consistency.⁴⁷

At the public briefing the Department provided the following explanation for the dual licensing requirements:

The auctioneers' situation has been quite a complex one working through this whole process. There was a time early in the process where there was a move not to 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 licenced, and the Government has determined that is the way to go.....

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 multiple licensed if they are acting in the various areas. The policy rationale was to try and 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 two licences....

It is a reality that has come out of the framework of the legislation rather than any deliberate intent to cause the auctioneers difficulties.⁴⁸

⁴⁵ Australian Livestock and Property Agents Association Ltd, Submission No. 2, pages 2-3.

⁴⁶ Australian Livestock and Property Agents Association Ltd.

⁴⁷ Australian Livestock and Property Agents Association Ltd, Submission No. 2, page 5.

⁴⁸ *Transcript of Proceedings (Hansard)*, Public Briefing, Legal Affairs and Community Safety Committee, 12 December 2013, page 10.

The Department further advised that:

To ensure any auctioneer who requires both real property and chattel auctioneer licences to perform a full range of functions is not financially disadvantaged, licensees will only be required to pay one licence issue fee component, regardless of how many licences they wish to apply for, renew, or restore across any of the agents Bills. An administration fee will continue to be charged for each licence to ensure recovery of costs associated with administering the licences. The administration fee is the lesser component of licencing fees, or approximately 6% of the cost for a three year auctioneer licence.....

Finally, auctioneers conducting sales of real property and associated goods will be authorised to auction the associated goods under the auctioneer licence provided by the Property Occupations Bill 2013.⁴⁹

As a solution to the dual licensing requirement ALPA has recommended that:

..a Property Agent Auctioneer Licence is considered an open or unrestricted auctioneer licence which would entitle the bearer of this licence to auction everything, that is, property (real estate) and chattels (livestock). If an auctioneer intends only to auction chattels then they would hold a Chattel Auctioneer Licence only, which would not permit the auction of property (real estate).⁵⁰

ALPA submits that this proposed solution would address many of its concerns and would:

- streamline the application and renewal processes for an auctioneers licence;
- reduce the associated red tape and administration costs, therefore negating the introduction of an administration fee to mitigate the increased cost; and
- consolidate training requirements, thereby reducing costs and more red tape.⁵¹

The Department responded:

The structure of the split Bills has been developed over a number of years and in part, was adopted to accommodate and minimise the impacts of the possible introduction of the National Occupational Licensing System (NOLS) in Queensland as the proposed NOLS framework only dealt with real property auctioning activities. In addition, the Bills to split the PAMD Act have been intentionally developed along primarily industry lines. The Bill deals with motor vehicle dealers and chattel auctioneers (given the common requirements particular to motor vehicle sales and auctions), the POB deals with real property, and the Debt Collectors (Field Agents and Collection Agents) Bill 2013 deals with the debt collection and process-serving industries. Unfortunately there is overlap in the functions some licensees perform. As a result, the nature of splitting the PAMD Act means that the relatively small number of licensees who work across different industry sectors will be regulated by more than one act.

However, measures will be in place (including for example fee concessions and transitional arrangements that grandfather existing licensees into the new licensing regime) to ensure that the burden of holding two licences is minimised. For example, an auctioneer under the POB will be able to sell goods by way of auction without a chattel auctioneer licence if the sale of goods is directly connected with a real property auction. In addition, the Bill and the POB provide for eligibility requirements for licensing that are largely the same, apart from

⁴⁹ Letter from the Department of Justice and Attorney-General, 10 December 2013, pages 10-11.

⁵⁰ Australian Livestock and Property Agents Association Ltd, Submission No. 2, page 6.

⁵¹ Australian Livestock and Property Agents Association Ltd, Submission No. 2, page 6.

educational requirements. This approach ensures any unnecessary inconsistencies and uncertainty for a prospective licensee about the probity requirements under the respective Bills is avoided.

Furthermore, an advantage of splitting auction functions across two separate pieces of legislation is that training and conduct provisions can be tailored to meet the particular needs of the bulk of each industry sector (which will address complaints raised by industry about the single auctioneer licence). As a result, 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 auction.⁵²

Committee Comment

The Committee has considered the issues concerning the split in authorisations of auctioneering functions where the Property Occupations Bill 2013 provides for auctioneers of real property and this Bill provides for chattel auctioneers authorised to auction goods including livestock and motor vehicles.

The Committee acknowledges the strong preference by ALPA not to split the authorisations of auctioneering functions into industry specific Acts due to their concern it will increase red tape and impose unnecessary regulatory burden on their membership. It also notes ALPA's solution to make the Property Agent Auctioneer Licence an open licence, which would authorise auctioneers to deal with real property and chattel (livestock).

However, the Committee is of the view that the intent of the Bill is to split the auction functions along industry lines to ensure that training and conduct provisions can be targeted to the needs of the industry. Further, the Bill has been developed in anticipation of the possible introduction of the National Occupational Licensing System (NOLS) in Queensland, which deals with real property auctioning activities.

Nevertheless, the Committee is aware of the overlap in the functions that some licensees perform and the subsequent burden of holding two licences. While the Committee is pleased with the measures outlined by the Department to minimise this burden, including, for example, an auctioneer under the Property Occupation Bill 2013 is authorised to auction goods if the sale of goods is directly associated with a real property auction. As well as these measures, the Committee suggests the Department may like to consider other ways to further reduce the burden of holding two licences, for example, simplifying the licence application process by introducing a single application form.

2.4 Improve the operation of the legislation

Use of the term 'compliance plate' and built date stamping

RACQ has raised an issue with the use of the term 'compliance plate' in subsection (3) (a) of Schedule 1, section 3:

Based on information provided by the federal Department of Infrastructure and Regional development, the term 'compliance plate' has not been officially used since 13 May 1996 when an amendment to the Motor Vehicles Standards Act 1989 was applied....

While the references to 'compliance plates' and 'identification plates' in (3) (a) may have been intended to address common usage, the two terms are in effect officially the old and

⁵² Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, pages 19-21.

new terms for the same thing. We find this confusing and believe other readers will as well, particularly given the common usage applications of these terms.

We suggest this Bill be altered to make it consistent with the terminology used in the Motor Vehicle Safety Act 1989, which is referenced in the explanatory notes, and that the term 'compliance plate' be removed and replaced with 'identification plate' and that the term 'maker's plate' be used to describe the plate fitted by the vehicle manufacturer at the time of production. Appropriate explanatory statements should also be included which would provide an opportunity to clarify the meaning and evolution of the terminology.⁵³

RACQ also points out that, rather than stamping the built date into a metal component of the vehicle or a metal plate, it is common, and permitted, practice to use self-adhesive labels in place of metal 'identification plates' and 'maker's plates' in which case the details are printed rather than stamped.

The Department advised that:

As it stands, for a vehicle fitted with a printed label rather than a stamped plate, the requirement of (3) (a) would mean that the vehicle's built date would have to be taken from its 'identification (compliance) plate' as outlined in (3) (b), as the requirements for a built date stamped on a metal plate or component has not been satisfied.

This issue could be overcome by referring to dates stamped on metal plates and those printed on 'identification' or 'maker's labels'.⁵⁴

The Department believes there is merit to RACQ's suggested changes:

The changes would improve the Bill's operation by ensuring the method for determining vehicle age is clearer and applicable to a full range of vehicle labelling types. There would be no change to the intent of the clause, but application of the clause could be enhanced.⁵⁵

Committee Comment

The Committee supports RACQ's proposed amendments to enhance the terminology around the use of the term 'compliance plate' and built date stamping. The Committee also notes the Department's acknowledgement of the merit for these proposed amendments. Further, while the proposed amendments will not change the intent of the clauses, the application of the clauses could be enhanced.

Recommendation 2

The Committee recommends the Bill be amended to ensure the method for determining vehicle age, as part of defining a 'warranted vehicle', is clearer and applicable to a full range of vehicle labelling types.

Interpretation and clarity of clause 96 (Obligation to give clear title)

RACQ raised a concern in their submission that clause 96 (and the comparable clause 142 for vehicles sold at auction) could be read as suggesting that a security interest registered under the *Personal Property Securities Act 2009* (Cwlth) overrides the buyer's right to clear title to the vehicle sold to them by the motor dealer, and that this interpretation appears inconsistent with consumer

⁵³ The Royal Automobile Club Queensland Limited, Submission No.3, pages 2-3.

⁵⁴ The Royal Automobile Club Queensland Limited, Submission No.3, page 3.

⁵⁵ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 16.

protection aims of the Bill.⁵⁶ RACQ suggested that this section could be clarified, ‘either by rewriting it in plain English or by the provision of an explanatory statement’.⁵⁷ The Department responded:

Clause 96 (and the comparable clause 142 for vehicles sold at auction) provide that the requirement to ensure clear title passes to the buyer does not apply to the extent that a security interest in the motor vehicle is registered under the Personal Property Securities Act 2009 (Cwlth).

It is important to note that these clauses do not reduce protections for consumers buying vehicles from motor dealers or auctioneers; they merely avoid legislative overlap, as the Personal Property Securities Act 2009 (Cwlth) already provides that a person who purchases a motor vehicle from a licensed motor dealer or auctioneer will purchase the vehicle free of any security interest.

More simply, the Personal Property Securities Act 2009 (Cwlth) ensures that where the seller is a licensed motor vehicle dealer, the buyer automatically acquires the property free of any security interest. This means that buyers do not need to search the PPS Register when buying a motor vehicle from a licensed dealer.

Clause 96 and 142 continue to be necessary to similarly ensure the requirement for a motor dealer or auctioneer to provide clear title in all other circumstances.

The submission’s suggestion that an explanatory statement be added to these clauses has merit as it would aid interpretation, given that the clauses otherwise require an understanding of the Personal Property Securities Act 2009 (Cwlth).⁵⁸

Committee Comment

The Committee supports RACQ’s suggestion to include an explanatory statement to clauses 96 and 142 to clarify their interpretation, particularly given that the clauses otherwise require an understanding of the *Personal Property Securities Act 2009* (Cwlth). The Committee also notes the Department’s acknowledgement of the merit of the suggestion to include an explanatory statement to clarify the interpretation of clauses 96 and 142.

Recommendation 3

The Committee recommends the Bill be amended to include an explanatory statement to clarify the interpretation of clauses 96 and 142.

Cooling-off periods

The Caxton Legal Centre proposes that the cooling-off period should apply to all vehicle sales through dealers, including sales on consignment, and cooling-off periods should be extended to protect vulnerable consumers.⁵⁹ The Committee is satisfied with the Department’s advice on this matter:

Increasing the duration of cooling-off periods would substantially increase the impact on traders and is at odds with the red tape reduction aims of the Bill. It should be noted that there is capacity under the Bill for a trader to give an option to purchase a vehicle to a

⁵⁶ The Royal Automobile Club Queensland Limited, Submission No.3, pages 3-4.

⁵⁷ The Royal Automobile Club Queensland Limited, Submission No.3, page 3.

⁵⁸ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014: pages 16-17.

⁵⁹ Caxton Legal Centre, Submission No. 6, pages 3 and 10.

prospective buyer while the vehicle is within the cooling-off period of an earlier purchase. A longer-cooling off period would introduce costs associated with delayed transactions and uncertainty despite that capacity.

The existing cooling-off period is sufficient for a buyer to arrange mechanical inspection, or reconsider a purchase in light of financial or other factors, which is the intent of the provision.

The submission also proposes that cooling-off periods should apply to sales on consignment. The policy intent of both the PAMD Act and of the Bill is that consumer protection elements of the legislation apply to dealer sales of vehicles owned by dealers. Where vehicles are sold by dealers acting as agents for non-dealers (on consignment) the protections are limited to ensuring clear title for the buyer.

There is no cooling-off period requirement for a private sale by a person who is not a motor dealer. To introduce cooling-off periods for sales on consignment would disadvantage people who choose to sell vehicles on consignment through a dealer, and create additional burden for motor dealers conducting those sales.⁶⁰

Training requirements for chattel auctioneers

The BMA would like the requirement that automotive auctioneers be trained at the Real Estate Institute of Queensland.⁶¹ The Department's response, however, clarifies that '*the Bill does not include an automotive auctioneer class of licence, and there is no requirement under any of the split Bills that training is conducted through a particular registered training organisation*'. Further:

Training requirements for chattel auctioneers, most likely as a subset of existing training requirements for the PAMD Act auctioneer licence, will be established in consultation with relevant industry and national training advisory groups.

Training can be provided by any validly registered training organisation. The Office of Fair Trading does not have oversight of registered training organisations, which are accredited by the Australian Skills Quality Authority. It would not be appropriate to prescribe that training be obtained from any particular training provider.⁶²

Committee Comment

The Committee accepts the Department's clarification that the Bill does not include an automotive auctioneer class of licence and that there is no requirement for training to be conducted through a particular registered training organisation.

Recognition of prior learning for interstate automotive auctioneers

The BMA submitted that there should be recognition of prior learning for interstate automotive auctioneers.⁶³ The Department clarified that the Bill does not include an automotive auctioneer class of licence. The Department further explained that:

While the specific training qualifications required for a chattel auctioneer licence under the Bill are yet to be determined, it is most likely these will be a subset of the training requirements for the existing auctioneer licence under the PAMD Act. The required competencies will be determined in consultation with relevant industry and national

⁶⁰ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 18.

⁶¹ Brisbane Motor Auctions, Submission No. 1, page 3.

⁶² Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 7.

⁶³ Brisbane Motor Auctions, Submission No. 1, page 3.

training advisory groups. Clause 32(2) (a) of the Bill provides that eligibility criteria can be met where the chief executive is satisfied an applicant has a qualification comparable to the approved qualifications for a chattel auctioneer licence.⁶⁴

Committee Comment

The Committee notes the Department's clarification in relation to specific training requirements for a chattel auctioneer licence.

No reference to specific regulations prescribing elements relied upon by the Bill

The RACQ refers to clause (1) in sections 106 and 107, which both refer to the *"non-refundable deposit which is the amount prescribed or worked out under a regulation"*, and raises a concern that as there is no reference to this regulation, there is no indication as to the dollar value of the non-refundable deposit.⁶⁵ RACQ also refers to Schedule 1 section 8 and raised concern that there is no reference to specific regulation prescribing defects not covered by statutory warranty.⁶⁶

The Committee is satisfied with the Department's explanation that the regulations to support the Bill are yet to be made, and:

... where reforms included in the Bill require supporting regulations that differ from the Property Agents and Motor Dealers Regulation 2001, it is anticipated the new regulation will reflect those changes. In relation to defects not covered by statutory warranty or the dollar value of non-refundable deposit amounts, it is anticipated that the new regulation will be consistent with the current regulation.⁶⁷

Provision of the codes of conduct regulations

In their submission, Caxton Legal Centre a raised concern that the Codes of Conduct Regulations are not intended to be substantively remade.⁶⁸ The Committee is satisfied with the Department's advice on this matter:

The PAMD Act provides that a regulation may prescribe a code of conduct about motor dealer practice and auctioneer practice that may include the following:

- *setting conduct standards for licensees and employees;*
- *establishing principles for fair trading; and*
- *providing for a system of complaint resolution.*

While the Bill does not include this provision, the Bill does provide that a regulation may provide for conduct standards for any of the following:

- *chattel auctioneers in carrying on auctioneering practice;*
- *motor dealers and motor salespersons in carrying on motor dealing practice.*

It is anticipated that particular conduct related matters that are considered necessary for the effective operation of the legislation and industry transactions, which are currently

⁶⁴ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 7.

⁶⁵ The Royal Automobile Club Queensland Limited, Submission No.3, page 2.

⁶⁶ The Royal Automobile Club Queensland Limited, Submission No.3, page 3.

⁶⁷ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 16

⁶⁸ Caxton Legal Centre, Submission No. 6, pages 7-9.

*provided for in the Codes of Conduct Regulations, will be replicated in the regulation supporting the Bill.*⁶⁹

2.5 Combating the threat of criminal motorcycle gangs

In his introductory speech, the Attorney-General reinforced the Queensland Government's determination to prevent identified participants in criminal organisations (as defined at section 60A(3) of the Criminal Code) and criminal organisations (as defined at section 1 of the Criminal Code) from holding or obtaining motor dealer licences or registration certificates to work in the used motor dealing industry:

*Links have been identified between criminal organisations and a number of business sectors, including the used-motor-dealing sector. The bill will prevent identified participants of criminal organisations from obtaining or holding a motor dealer licence or motor salesperson registration certificate.*⁷⁰

Consistent with previous pieces of legislation introduced and passed in the House 'these provisions will support the government's strong action on criminal organisations by preventing participants in criminal organisations from infiltrating used-motor-dealing businesses or otherwise legitimising their activities through these businesses'.⁷¹

Issues raised in submissions

The Bar Association of Queensland (BAQ) expressed concern about clause 157(1)(d) which provides that a person is not a suitable person to hold a registration certificate if the person is an 'identified participant in a criminal organisation', noting that not all members are people who have committed or are likely to commit offences. The submission expresses concern that the provision 'discriminates against a person simply because that person is a member of a group'.⁷²

The Department's responded to the BAQ's concerns:

The clause (and clause 21 for motor dealer licences) is necessary to support Government's efforts to prevent identified participants of criminal organisation from holding or obtaining licences or registration certificates as motor dealers or motor salespersons. More broadly, the measures are necessary elements of a raft of measures implementing Government's commitment to address serious community concern about incidents of violent, intimidating and criminal behaviour of participants of criminal motor cycle gangs, as well as their infiltration into the used motor dealing industry.

The BAQ also expressed concern that clauses 202 and 203 'limit review rights when a person is refused a licence or certificate on the basis of being a participant in a criminal organisation by restricting access to information on which the original decision was based'.⁷³

⁶⁹ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 Jan 2014, pages 17-18.

⁷⁰ *Record of Proceedings (Hansard)*, 20 November 2013, page 4059

⁷¹ *Record of Proceedings (Hansard)*, 20 November 2013, page 4059.

⁷² Bar Association of Queensland, Submission No. 5, page 2.

⁷³ Bar Association of Queensland, Submission No. 5, page 2.

The Department responded:

*These measures are necessary to prevent the release of confidential criminal intelligence. Natural justice is still afforded to an affected person as they are able to apply to the Queensland Civil and Administrative Tribunal for a full review of the licensing or registration decision.*⁷⁴

Committee Comment

The provisions in the Bill continue the Government's strong focus on law and order and will aid in stopping criminal organisations from infiltrating businesses in the used motor dealing industry.

The provisions are consistent with those contained in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* passed by the Parliament in November 2013 and the Committee is satisfied the provisions will address the serious community concerns about violent, intimidating and criminal behaviour of criminal motor cycle gangs.

As expected there are a number of fundamental legislative principle issues relating to preventing identified participants of criminal organisations from holding or obtaining motor dealer licences or registration certificates, which are addressed in Part 3 of this Report.

⁷⁴ Letter from the Department of Justice and Attorney-General, Attachment 4, 31 January 2014, page 13.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ (FLP) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill.

The examination raised a number of potential FLP issues in various provisions. The Committee is satisfied the majority of the potential breaches are either minor in nature, have been sufficiently addressed in the Explanatory Notes or replicate existing provisions in the PAMD Act. Accordingly, the Committee has not detailed them in this report.

There were also a number of significant FLP matters that were identified in relation to combating the threat of criminal motorcycle gangs. These are in the following sections of the Bill:

- clauses 21 to 23, 30, 36, 44, 48, 53, 63, 157, 158, 163, 166, 169, 172 and 182 – relating to identified participants in criminal organisations;
- clauses 56, 61, 62, 176, 180 and 181- relating to immediate action (cancelling suspending or amending a licence) without a show cause process; and
- clauses 202 and 203- relating to the removal of review rights.

Committee Comment

These matters were identified in detail in the Explanatory Notes and were also addressed by the Committee in its Report no. 46 – Criminal Law (Criminal Organisations Disruption) and Other Legislation amendment Bill 2013. Further, in response to that earlier report, the Attorney-General spoke to a number of the FLP issues during the second reading debate of the Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013.

The Committee accepts the Government policy on combating criminal organisations may raise issues of inconsistency with the FLPs however considers that such measures are necessary to give effect to the policy and put in place an appropriate structure to deal with organised crime.

While the Committee has no hesitation in recommending the Bill be passed, the above sections are brought to the attention of the House and the Committee refers readers to its previous report and the subsequent debate in November 2013.

3.1 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee Comment

The Committee considers, in general, the Explanatory notes tabled with the introduction of the Bill are very detailed and contain the information required by Part 4 and a substantial level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

However, the Committee has identified a number of factual errors in the Explanatory Notes. For example, the Explanatory Notes refer to the Legislative Standards Act 1991, instead of the correct title of the *Legislative Standards Act 1992*. The description of the Bill’s consistency with FLPs on pages 16 to 26 also contains a number of errors which made it difficult to assess potential FLPs issues raised by the Bill.

Appendix A – List of Submissions

Sub #	Submitter
001	Brisbane Motor Auctions
002	Australian Livestock and Property Agents Association Ltd
003	Royal Automobile Club of Queensland
004	Motor Trades Association Queensland
005	Bar Association of Queensland
006	Caxton Legal Centre Inc

Appendix B – Schedule of Witnesses at the Public Hearing

Australian Livestock and Property Agents Association Ltd <ul style="list-style-type: none">• Ms Andrea Lethbridge, Northern Regional Manager
Royal Automobile Club of Queensland <ul style="list-style-type: none">• Mr Russell Manning, Technical Researcher• Mr Steve Spalding, Technical and Safety Policy
Motor Trades Association of Queensland <ul style="list-style-type: none">• Ms Kellie Dewar, General Manager• Mr Michael Kennedy, Chairman, Used Car Division

Statement of Reservation

BILL BYRNE MP

SHADOW MINISTER FOR POLICE, EMERGENCY AND CORRECTIVE SERVICES, PUBLIC WORKS AND NATIONAL PARKS

MEMBER FOR ROCKHAMPTON

PO Box 15057, City East QLD 4002

reception@opposition.qld.gov.au (07) 3838 6767



19 February 2014

Mr Ian Berry MP
Member for Ipswich
Chairperson
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Berry

Statement of Reservation – Motor Dealers and Chattel Auctioneers Bill 2013

I wish to notify the committee that the Opposition has reservations about aspects of Report No. 52 of the Legal Affairs and Community Safety Committee into the *Motor Dealers and Chattel Auctioneers Bill 2013*.

The Opposition will detail the reasons for its concern during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to be "B. Byrne", with a long horizontal line extending to the right.

Bill Byrne MP
Member for Rockhampton