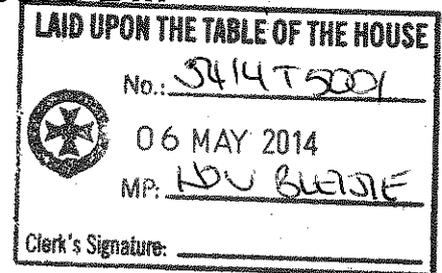


Mikes 6/5/14

Motor Dealers and Chattel Auctioneers Bill 2013



Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Motor Dealers and Chattel Auctioneers Bill 2013

Objectives of the Amendments

The policy objectives of the amendments to the Bill are to address minor technical or editorial errors that have been identified since the Bill was introduced, and to clarify the operation of certain provisions. The amendment objectives are to:

- remove certain sections currently included in clause 7 that are not applicable to the matters administrators, liquidators, controllers, receivers and trustees in bankruptcy (administrators etc.) should be exempt from in the Bill, and, at the same time, ensure consistency across the three industry-specific Bills;
- correct clause 64 by removing an incorrect penalty;
- clarify that a licence may be issued or renewed for a term shorter than the prescribed 1-year or 3-year term in particular circumstances, which are to be prescribed by regulation;
- clarify clauses 96 and 142 about the obligation to give clear title;
- clarify in clause 166 that an application for a motor salesperson's registration certificate is to be made in accordance with all the requirements of clause 154;
- specifically refer to the provision of fee discounts as a matter about which a regulation may be made;
- improve the operation of the legislation by correcting the terminology around identification plates and 'built date' labelling and stamping; and
- insert a consequential amendment to the *Public Trustee Act 1978* in Schedule 3 to correct the reference to an auctioneer's licence.

Achievement of the Objectives

Clause 7 (Administrators etc.) amendments

Clause 7 of the Bill provides that appointees (specifically being administrators, liquidators, controllers, receivers and trustees in bankruptcy) are exempt from particular provisions of the Bill which are prescribed in subclause (3) of clause 7. The exemptions apply while an appointee is performing an activity that is authorised under a licence that is, or was, in force under the Bill.

Two of the sections that are listed in subclause (3) merely refer to what a motor dealer licence and a chattel auctioneer licence authorise. These sections (76 and 122) are to be removed from the prescribed provisions in subclause (3).

The types of provisions from which an appointee is exempt are inconsistent across the Property Occupations Bill 2013, the Debt Collectors (Field Agents and Collection Agents) Bill 2013, and this Bill. This amendment will bring consistency across these three Bills with respect to the exemptions for appointees.

Correction of clause 64 (Form of licence)

Clause 64 sets out the form of a licence and the particulars that must be shown on a licence. However, the clause incorrectly includes a penalty provision. The objective of this amendment is to correct the clause by removing the penalty provision.

Clarification of clause 66

The objective of the amendment to clause 66 is to enable a licence to be issued or renewed for a term shorter than the prescribed 1-year or 3-year term in particular circumstances, which are to be prescribed by regulation.

Clause 66 of the Bill provides that a licence may be issued for a 1-year or 3-year term. However, there are a range of circumstances when this may impose unnecessary administrative burden on licence holders and government, and it may be beneficial to instead issue or renew a licence for a term shorter than 1 or 3 years. Accordingly, the amendment provides power for a regulation to prescribe the circumstances under which a licence may be issued or renewed for a shorter term.

Clause 66 will also be amended to include an example of the type of circumstances in which a licence term could be shortened.

Clarification of clauses 96 and 142

The objective of these amendments is to be achieved by inserting a Note under clauses 96 and 142 to explain how the *Personal Property Securities Act 2009* [Cwlth] (PPS Act) works with this Bill. The Note will alert the reader to the PPS Act and that it, too, provides for certain circumstances in which title may pass free of a security interest.

Clarification of clause 166

The objective of this amendment is to correct a reference in the clause to section 154, and clarify that the chief executive must be satisfied that an applicant for a registration certificate has made their application under section 154, not just section 154(2) which requires payment of all necessary fees and costs.

Reference to fee discounts in the list of matters about which a regulation may be made

The objective of this amendment is to be achieved by inserting additional wording in clause 236(2) to include, in relation to fees, the discounts for persons applying for more than one licence as a matter about which a regulation may be made.

Correcting the terminology around the definition of 'built date'

The objective of these amendments is to be achieved by amending the terminology used for vehicle labelling. The amendment achieves this by removing the term 'compliance plate' from the definition, as this term is no longer used in the *Motor Vehicle Standards Act 1989* [Cwlth], with the correct term being 'identification plate'. The definition will also extend the definition of labelling to account for the fact that information may be shown stamped on a metal plate or metal component of the car, or printed on an adhesive label.

Insertion of a further consequential amendment—Public Trustee Act 1978

The objective of inserting these consequential amendments to the *Public Trustee Act 1978* is to correct an old reference to an auctioneer's licence. The reference was correct for an auctioneer licence under the *Property Agents and Motor Dealers Act 2000*, but must be amended to refer to an auctioneer licence under the *Property Occupations Act 2014* and to a chattel auctioneer licence under this Act, when made.

Alternative Ways of Achieving Policy Objectives

Legislative amendment is the only means of achieving the policy objectives.

Estimated Cost for Government Implementation

The proposed amendments will not impose additional costs on Government.

Consistency with Fundamental Legislative Principles

The proposed amendments are generally consistent with fundamental legislative principles.

However, the amendment to clause 66 raises a possible breach of the fundamental legislative principle that legislation is required to have sufficient regard to the institution of Parliament (*section 4(2)* of the *Legislative Standards Act 1992*). More specifically, it could be argued that the amendment to clause 66 to allow a regulation to prescribe circumstances where a licence may be issued or renewed for a shorter term than that specified in clause 66 enables the application of the primary legislation to be affected by subordinate legislation or executive action (that is, the amendment may amount to a 'Henry VIII' clause).

The possible breach of fundamental principles is considered justified for the following reasons.

Under clause 66, a licence may be issued for a 1-year or 3-year term. However, there are a range of practical circumstances where it is both appropriate, and in the interests of licensees and government, for the legislation to provide administrative flexibility for licences to be issued for a shorter term.

For example, the particular operations or structure of a regulated business can be complex and may mean that multiple individual or corporate licences are held in relation to the business. In some cases, these licences will be applied for (and therefore issued) at different times, resulting in different expiry dates applying to the licences.

By providing capacity to issue licences for a shorter term than the prescribed 1-year or 3-year term, the amendment will allow the Office of Fair Trading to align expiry dates applying to the licences, thereby streamlining and reducing costs associated with licence renewal processes for both licensees and government.

The amendment to clause 66 promotes administrative efficiency in the licensing process. By allowing the circumstances under which a licence may be issued for a shorter term to be prescribed by regulation, the amendment will enable the licensing framework to be responsive to the needs of regulated businesses while also ensuring transparency about when shorter terms can be applied to licences by the chief executive.

Consultation

The amendments to the Bill stem from clarification and corrections sought by the Legal Affairs and Community Safety Committee in its report on the Motor Dealers and Chattel Auctioneers Bill 2013 following the Committee's inquiry into and examination of the Bill, and errors and omissions identified by the Department of Justice and Attorney-General.

The Parliamentary Committee sought comment on the Bill by inviting written submissions from all Queenslanders and holding a public hearing. A detailed submission was received from the RACQ. One of the issues raised in their submission to the Committee was a concern that clauses 96 and 142 could be read as suggesting that a security interest registered under the *Personal Property Securities Act 2009* [Cwlth] overrides a buyer's right to clear title to the motor vehicle sold to them by a motor dealer. The RACQ suggested that the section could be clarified through a rewording of the provision or the use of an explanatory statement.

In the Legal Affairs and Community Safety Committee's Report No. 52 on the Bill the Committee recommended that "the Bill be amended to include an explanatory statement to clarify the interpretation of clauses 96 and 142".

The RACQ also advised in their submission that the term 'compliance plate' used in the Bill in relation to identifying the 'built date' of a motor vehicle is outdated and has been replaced with 'identification plate'. Identifying a motor vehicle's built date is important for determining whether a statutory warranty applies to the motor vehicle.

The RACQ also noted that some vehicles do not have a date stamped on a metal plate, as provided in the Bill, but instead have an adhesive label with details printed rather than stamped.

The Committee also recommended in its report that “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”.

NOTES ON PROVISIONS

Amendment 1 **Clause 7 (Administrators, etc.)**

Amendment 1 amends clause 7 of the Bill to omit section 76 (What a motor dealer licence authorises) from the list of sections from which administrators, liquidators, controllers, receivers and trustees in bankruptcy (administrators, etc.) are exempt. Clause 76 of the Bill merely provides the activities that are authorised under a motor dealer licence. The clause does not contain matters from which an administrator, etc. would need to be exempt. Administrators, etc. are exempt from having to hold a licence under the Property Occupations Bill 2013, the Debt Collectors (Field Agents and Collection Agents) Bill 2013, and this Bill.

Amendment 2 **Clause 7 (Administrators, etc.)**

Amendment 2 amends clause 7 of the Bill to omit section 122 (What a chattel auctioneer licence authorises) from the list of sections from which administrators, liquidators, controllers, receivers and trustees in bankruptcy (administrators, etc.) are exempt. Clause 122 of the Bill merely provides for what activities are authorised under a chattel auctioneer licence. The clause does not contain matters from which an administrator, etc. would need to be exempt. Administrators, etc. are exempt from having to hold a licence under the Property Occupations Bill 2013, the Debt Collectors (Field Agents and Collection Agents) Bill 2013, and this Bill.

Amendment 3 **Clause 64 (Form of licence)**

Amendment 3 amends clause 64 of the Bill to omit the application of a penalty. Clause 64 sets out the form of a licence and the particulars the licence must contain. These are requirements placed on the chief executive. The clause also applies a maximum penalty of 100 penalty units and the amendment is to omit this penalty provision.

Amendment 4 **Clause 66 (Term of licence)**

Amendment 4 amends clause 66 by inserting a new subsection (2) which provides a power for a regulation to prescribe the circumstances under which a licence may be issued or renewed for a shorter term.

An example of the circumstances where a licence may be shortened has also been inserted under clause 66. For example, where a person is licensed under this Bill and then applies for and is granted a second licence under this Bill, the Property Occupations Bill 2013 or the Debt Collectors (Field Agents and Collection Agents) Bill 2013, the term of the second licence would be aligned with the expiry date of the first licence so that subsequently, both licences would come up for renewal together. This is both more convenient for the licensee and streamlines and reduces costs associated with licence renewal processes for both licensees and government.

Amendment 5 **Clause 96 (Obligation to give clear title)**

Amendment 5 amends clause 96 of the Bill to clarify the meaning of the clause. Clause 96 applies if a used motor vehicle is to be sold by or for a motor dealer to someone else, other than in a sale by auction.

Subclause (2) provides that the responsible licensee must ensure a buyer gains clear title to a motor vehicle at the time property in the vehicle passes to the buyer. The clause explains who

To achieve clarity in the meaning of the clause, and in particular clause 142(5), an explanatory note is to be inserted after clause 142(5) by this amendment to alert the reader that the PPS Act provides for circumstances in which a buyer of a motor vehicle takes the vehicle free of a security interest.

In circumstances where the security interest is not registered on the PPS Register, the responsible licensee must ensure clear title for the buyer.

Amendment 7 Clause 166 (Chief executive may issue or refuse to issue registration certificate)

Amendment 7 amends clause 166 to clarify that the chief executive must be satisfied that an applicant for a registration certificate has made their application under section 154, and not just section 154(2) which relates to payment of all the applicable fees and costs. The amendment therefore omits 'section 154(2)' and replaces it with 'section 154'.

Amendment 8 Clause 236 (Regulation-making power)

Amendment 8 amends clause 236 of the Bill to clarify that the list of matters about which a regulation may be made, as provided at clause 236(2) is not the extent of matters about which a regulation may be made. In other words, the regulation-making power is not to be limited to only that which is listed in clause 236(2).

Amendment 9 Clause 236 (Regulation-making power)

Amendment 9 amends clause 236 of the Bill to specifically include in the list of matters about which a regulation may be made at clause 236(2) that a regulation may be made about fee discounts.

Currently under the *Property Agents and Motor Dealers Regulation 2001*, there is a concession applied to applicants for, and holders of, multiple licence categories under the *Property Agents and Motor Dealers Act 2000*. The concession provides that, for individuals, only a single issue fee is payable regardless of the number of licence categories applied for, or being renewed. For corporations, only a single issue fee and a single application fee is payable regardless of the number of licence categories applied for, or being renewed.

This amendment includes fee discounts as a matter about which a regulation may be made.

Amendments 10, 11, 12 and 13 Schedule 1 (Statutory warranty provisions)

Amendments 10 through 13 amend Schedule 1, clause 3 (Meaning of *warranted vehicle*) of the Bill to correct technical errors in how the clause describes how to identify the 'built date' of a motor vehicle to determine if the motor vehicle is a motor vehicle to which a statutory warranty applies.

The age of a used motor vehicle on the date it is purchased is one of two factors which need to be considered in order to determine if a vehicle is a warranted vehicle. The other factor is the number of kilometres the vehicle has travelled according to the odometer reading. A warranted vehicle, under Schedule 1, clause 3 of the Bill is one which has a reading of less than 160,000 kilometres on its odometer, and has a built date that is no more than ten years before the day of sale of the motor vehicle.

In the Bill, Schedule 1, clauses 3(3)(a) and 3(3)(b) define the term 'built date' by reference to dates stamped on either a compliance plate or an identification plate. Although the term

'compliance plate' is still in common use, it is an old reference term which has been removed from Commonwealth legislation. It has been replaced by the single term 'identification plate', which is defined under the *Motor Vehicle Standards Act 1989* [Cwlth]. Amendment clauses 10 and 11 remove the out of date term 'compliance plate' from the definition of 'built date'. Amendment clause 12 therefore removes the definition of 'compliance plate' provided under subclause (5) as the term is no longer to be used in the Bill. Amendment clause 13 introduces a definition for 'shown' for the purposes of Schedule 1, clause 3.

Amendment clauses 10, 11 and 13 combine to refine the definition of 'built date' to take account of the types of labelling that can display the date of manufacture that may be found on motor vehicles. Amendment clause 10 replaces the first part of the definition of 'built date' in subclause (3) with a statement that if the date of manufacture is shown on the vehicle, then that is the 'built date'. Amendment clause 11 removes 'compliance plate' as a place where a built date may be shown, with 'identification plate' remaining as a metal plate which can display, among other details, the date of manufacture or built date. Amendment clause 13 provides for the definition of 'shown' in relation to a built date on a vehicle. This definition, for the purposes of this clause is quite narrow, and does not relate to identification plates and dates on identification plates. 'Shown', for clause 3, means that the date can be stamped on a metal component of the vehicle or on a plate—other than an identification plate—that is attached to the vehicle

Following the amendment being made, to determine the build date of a motor vehicle, if the date of manufacture is shown on the vehicle, then that is the 'built date' for the purposes of calculating whether a vehicle was no more than ten years old when it was purchased. If the date of manufacture is not shown, then the built date is the date stamped or printed on the identification plate.

Amendment 14 Schedule 3 (Consequential amendments)

Amendment 14 inserts a consequential amendment to the *Public Trustee Act 1978*. The amendment is required because the *Public Trustee Act 1978* refers to a "person who holds an auctioneer's licence" in section 12 of that Act. Under the PAMD Act this was correct, but such a phrase does not encompass both types of auctioneer licence following the split of the PAMD Act into the Property Occupations Bill 2013 and the Motor Dealers and Chattel Auctioneers Bill 2013.

Accordingly, this amendment replaces 'auctioneer's licence' with 'relevant auctioneer's licence'. A relevant auctioneer's licence is then defined as meaning an auctioneer licence under the Property Occupations Act 2013 or a chattel auctioneer licence under the Motor Dealers and Chattel Auctioneers Act 2013 under which the sale by auction of the land or goods would be authorised.

