

17 January 2014

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Sir/Madam

Property Occupations Bill 2013 and other bills

The Real Estate Institute of Queensland (“**REIQ**”) appreciates the opportunity to make a submission in relation to the *Property Occupations Bill 2013*, the *Motor Dealers and Chattel Auctioneers Bill 2013*, the *Agents Financial Administration Bill 2013* and the *Debt Collectors (Field Agents and Collection Agents) Bill 2013* (collectively “**the Bills**”) which have emerged in connection with the split and review of the *Property Agents and Motor Dealers Act 2000* (“**PAMD Act**”).

As outlined in our response to the consultation paper released in February 2013 in relation to the split and review of the PAMD Act (“**REIQ Submission**”), the REIQ supports the split of the PAMD Act into industry specific legislation. As demonstrated by other stakeholder responses to the consultation paper, support for the same can be found amongst many connected with the real estate profession.

In this submission, we have focussed predominantly on the *Property Occupations Bill 2013* (“**the PO Bill**”) given that the majority of the amendments we recommended in the REIQ Submission relate specifically to this bill.

Generally, the REIQ is extremely pleased with the PO Bill and we support the passing of the Bill subject to the comments outlined in this submission. We have been extremely pleased with the extensive consultation undertaken by the government in respect of this legislative change process and acknowledge that the vast majority of the amendments we recommended in the REIQ Submission have been incorporated into the PO Bill.

We are confident that the new proposed legislative regime will simplify the real estate buying and selling process and greatly reduce the number of legal disputes that have arisen in connection with real estate transactions since the introduction of the PAMD Act. Unfortunately, many contract terminations have occurred due to technical and minor omissions of a legislative nature. Although the REIQ is an advocate for consumer protection, this must be balanced against contractual accountability and commercial reality and efficiency.

It is our view that the PO Bill delivers a far more balanced playing field which recognises the respective rights and obligations of all parties to a real estate transaction. The removal of administrative barriers and requirements such as, completion of assignment consent provisions in connection with all appointments and the need to attach a warning statement to all relevant contracts (together with other requirements associated with this document) are an excellent example of the removal of red tape and the much needed simplification of real estate transaction process.

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Prior to the development of the REIQ Submission, the REIQ conducted extensive consultation with its membership and the broader industry to formulate the views and recommendations contained in that document. Subsequent to the release of the PO Bill, we have also undertaken a State-wide presentation to the REIQ membership in relation to the Bill. This presentation was delivered shortly after the PO Bill was introduced into Parliament and was delivered to approximately 1000 real estate practitioners. This presentation involved an overview of the key aspects of the Bill. In delivering that presentation, we sought feedback from the membership in relation to the PO Bill.

We are pleased to advise that the response to the PO Bill from the membership has been very positive. The comments made in this submission do however include some further recommendations for change based on membership feedback received.

Recommendations and comments

1. Auction related matters

1(a) Statements made by auctioneers in the course of an auction

Subject to a limited exception, sections 214 and 216 of the PO Bill prohibit an auctioneer and agent from disclosing any price or price guides in relation to a residential property auction sale.

The REIQ supports this general prohibition and we acknowledge that it is consistent with the recommendation made in the REIQ Submission. However, we are concerned that this provision may potentially impact on the practice of declaring a property to be ‘on the market’ once the vendor’s reserve price has been met during the conduct of an auction.

It is our view that the relevant provisions are intended to prevent price guides being disclosed (other than as permitted in the PO Bill) leading up to an auction. Once an auction is in process, and provided a reserve has been properly established, the provision should not preclude an auctioneer from making a statement which indicates that the reserve has been met.

We are therefore seeking the inclusion of a provision in the Bill to clarify that an auctioneer will not contravene section 214(2) if the auctioneer makes a statement in the course of an auction that ‘the property is on the market’ or words to that effect *provided* that the reserve price has been reached or exceeded.

1(b) Written appraisals to include price ranges

Sections 213 and 215 of the PO Bill permit auctioneers and agents to provide a “*written explanation*” showing how the auctioneer or agent has “*decided the market value*” of the relevant property.

Some real estate practitioners have queried whether this provision permits an agent or auctioneer to provide an appraisal range as opposed to a single figure. The PO Bill does not provide a definition of the terms “*written explanation*” or “*market value*”.

The REIQ’s position is that a price range should be permissible given the significant risk and difficulty associated with providing a fixed figure appraisal.

Our view is that the provisions (as they stand) do not restrict an agent or auctioneer from providing a written explanation featuring a price range. However, given the level of concern and significance connected to this matter, clarification is desirable. We recommend that a provision be inserted making it clear that the market value may be expressed as either a single figure or range.

1(c) Flexibility to prepare market value documentation

The aspect of the Bill which has attracted the most amount of attention and criticism from our membership (and some within the broader property industry) is the introduction of the provisions restricting the use of

price guides in connection with auction and no-price properties (ss 214 and 216). As the peak body representing a broad range of views, we consider it important to acknowledge this.

As outlined in the REIQ Submission, we support these provisions for the reasons outlined in that document. Despite some opposition, as noted above, we have confirmed that the majority of the REIQ membership also support the principle of these provisions. That said, we are concerned that the PO Bill compel an agent or auctioneer to prepare a comparative market analysis (“CMA”) where they are asked by a vendor to provide “*information about the price at which the residential property that is to be, or maybe, offered for sale by auction*”. As shown below, sections 213 and 215 restrict an auctioneer or agent to prepare a CMA *unless* a CMA cannot be prepared (see underlined text):

Section 213(4)

An auctioneer must not help a seller decide the reserve price for offered property unless, before the seller decides the price, the auctioneer gives the seller—

- (a) *a copy of a comparative market analysis for the offered property; or*
- (b) *if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the auctioneer decided the market value of the property.*

Section 215(2)

If the real estate agent decides to give the person the information, the real estate agent must, when giving the person the information, give the person—

- (a) *a copy of a comparative market analysis for the offered property; or*
- (b) *if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the real estate agent decided the market value of the property.*

On account of the above, an agent or auctioneer is only permitted to prepare the second type of document (a “written explanation”) if the data required for a CMA is not available. A CMA is by its very definition extremely restricted in nature:

Comparative market analysis, for an offered property, means a document comparing the offered property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the offered property and are within 5km of the offered property (Schedule 3).

The REIQ is strongly opposed to this legislative restriction. Whilst the REIQ advocates the preparation of appraisals substantiated with objective data (where available), CMA’s are not widely used in the industry and are not seen as sufficiently reliable price guide tools. This is because a CMA comprises very limited data which may not always be relevant to the specific property to be sold. By supplying a vendor with CMA data alone, the unique characteristics and features of the property being sold are not taken into account. Consequently, a CMA will not always be an accurate reflection of the true market value of the relevant property.

It is critical that agents and auctioneers have the flexibility to prepare a “written explanation” encompassing a range of information and factors they have considered in forming a view about the market value of the property. As discussed above, comparable sales data is important (where available and relevant) but the appraisal should not be exclusively limited to the restricted data permitted to be used for the purposes of a CMA.

The need for this flexibility is particularly important given that the PO Bill provides agents and auctioneers with only one method of external price guide advice; an agent and auctioneer are only permitted (subject to the vendor’s consent) to provide prospective purchasers with the *same* document they have previously prepared for their vendor clients (s214(3) and 216(4)). On account of these legislative restrictions contained

in sections 214 and 216 of the PO Bill, this means that a prospective purchaser will usually receive a CMA rather than a written explanation.

For the same reasons outlined above, the REIQ is concerned by the prospect of a potential purchaser relying on the limited data in a CMA to form a view as to the price sought for the relevant property.

In light of the above matters, we are seeking the removal of the following underlined text in the following sections in the PO Bill:

Section 213(4)(b)

if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the auctioneer decided the market value of the property;

Section 215(2)(b)

if a comparative market analysis can not be prepared for the offered property, a written explanation showing how the real estate agent decided the market value of the property.

The REIQ views this issue as one of critical importance to the real estate profession. It is imperative that agents or auctioneers have the freedom to prepare meaningful appraisals for vendors so that they can form an accurate view on the market value of their property. Without this, an effective and efficient campaign is difficult to facilitate. Similarly, potential purchasers should be given (where the vendor is prepared to do so) accurate price guide information.

2. Chattel auctioneers licence

We are pleased to note that, as recommended in the REIQ Submission, the requirement to be licensed to auction chattels has been incorporated into the *Motor Dealers and Chattel Auctioneers Bill 2013*. Our support for chattel auction licensing remains firm.

The PO Bill states that auctioneers may only auction chattels where they are directly connected to a property sale. Our regional and rural auctioneer members are commonly engaged to conduct 'stand alone' chattel auctions involving the sale of farming machinery, livestock and other miscellaneous goods. These auctions often have no direct connection to a property sale. Consequently, many auctioneers (licensed under the PO Bill) will need to hold a separate licence to conduct chattel auctions not related to property.

It is our view that property auctioneers should be able to conduct both chattel and property auctions without the need for an additional licence and/or any other additional training. Accordingly, we are seeking an amendment to the PO Bill which provides that property auctioneers may conduct auctions involving real property and chattels (regardless of whether the chattels are associated with a property sale) *provided* they comply with the requirements of both the PO Bill and the *Motor Dealers and Chattel Auctioneers Bill 2013*.

As an alternative to the above, we are seeking the insertion of a provision in the *Motor Dealers and Chattel Auctioneers Bill* which allows auctioneers who are licensed under the PO Bill to:

- automatically qualify for a chattel auctioneer licence provided they have a current auctioneer licence under the PO Bill; and
- to obtain a chattel auctioneer licence:
 - without the need for further educational training; and
 - for no additional fee.

3. Advertisements for a business

Under section 95 of the PO Bill, an agent and a resident letting agent must not publish, or permit to be published, in a newspaper or elsewhere “*an advertisement for the agent's business*” without stating in the advertisement the particulars that may be prescribed under a regulation.

We recommend that for the sake of clarity, a definition of this type of advertisement be included in the PO Bill. For example, it is not clear whether the provision extends only to advertisements exclusively promoting the business itself or, whether an advertisement that includes an advertisement for the business in connection with a property listing is also captured.

The REIQ recommends that the definition be limited to an advertisement that is published exclusively for the purpose of promoting the relevant business. The cost and practical difficulties associated with including prescribed information in other types of advertisements would be significant.

It is also important that the regulations, when drafted, take into account the scope of the provision and consider the practical consequences and expense associated with dictating the size and detail of the prescribed information.

4. Proposed Exemptions

The REIQ has held a long standing position that all individuals engaged in practices governed by real estate legislation should possess certain minimum educational qualifications and be licensed (or registered) to undertake the relevant activities. We consider this is critical to consumer protection. It also ensures accountability and means that real estate transactions are facilitated by individuals with minimum requisite knowledge and training.

The REIQ has carefully considered the exemption proposed under sections 7 and 8. We are prepared to support the exemption proposed under section 7 of the PO Bill given the transactions contemplated in that provision relate only to related entities.

We are also prepared to support the exemption proposed in section 8(1)(b) of the PO Bill *provided* that the threshold amount is set at a total gross floor area of at least 10,000sqm. We consider that this threshold is appropriate to ensure the parties to such a transaction are “sophisticated” (in line with the policy intent outlined in the explanatory notes) and do not require the level of consumer protection otherwise warranted.

We are also prepared to support the exemptions proposed under section 8(2) provided that:

- a person acting under this exemption is required to undertake educational training that is at least equivalent to the training they would otherwise be required to undertake (to qualify for registration) to perform the subject activities if the exemption under section 8 did not exist; and
- the minimum threshold mentioned above applies.

If the above recommendations are adopted, we consider that this exemption will apply predominantly to large shopping centres. Although tenants within such buildings will not necessarily be a ‘sophisticated’ party, we note that these parties can rely on other legislative safeguards available under the *Retail Shop Leases Act 1994*.

We are concerned by the provision in section 9 which prospectively allows the expansion of ‘other’ exemptions through the regulations. We are prepared to support the provision if further exemptions are subject to prior consultation with the real estate industry.

Conclusion

The REIQ and its members look forward to the passing of the Bills. We have intentionally limited our comments in this submission to issues we consider to be particularly critical.

We wish to acknowledge the excellent level of consultation between the government and our organisation in relation to the Bills. The consultation has been productive and we appreciate that the vast majority of our recommendations for legislative change have been adopted. We are confident that the new legislative platform offered through the Bills will create positive change and simplification.

Subject to the recommendations and comments in this submission, we support the passing of the Bills.

The REIQ welcomes the opportunity to appear before the Legal Affairs and Community Safety Committee to discuss the matters outlined herein or any other aspect of the Bills.

We confirm that no aspect of this submission is confidential.

If you would like to discuss any aspect of this submission, please do not hesitate to contact Ms Antonia Mercorella, General Counsel on: amercorella@reiq.com.au or 3249 7325.

Yours faithfully

A handwritten signature in black ink, appearing to read 'A. M. Kardash', written in a cursive style.

Anton Kardash
MANAGING DIRECTOR AND
CHIEF EXECUTIVE OFFICER