



20 January 2014

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

Dear Sir

Property Occupations Bill 2013
Motor Dealers and Chattel Auctioneers Bill 2013
Debt Collectors (Field Agents and Collection Agents) Bill 2013
Agents Financial Administration Bill 2013
Fair Trading Inspectors Bill 2013

I write in response to the letter of Mr Berry MP, Chair, dated 28 November 2013 inviting the Association to make submissions in relation to the Bills listed above.

In combination the first three Bills repeal the *Property Agents and Motor Dealers Act 2000* (“PAMD”) and replace it with three industry specific Acts. Additionally the *Agents Financial Administration Bill 2013* deals with the financial obligations of licensees whilst the *Fair Trading Inspectors Bill 2013* consolidates and makes uniform inspectorate provisions currently spread over 14 separate Acts.

The stated objectives of the Bills include reducing red tape and regulations currently imposed on the industries covered.

In combination the Bills largely replicate and refine existing provisions. Where there are changes to the law there are no doubt industry and consumer groups well placed to comment on the practical effect of those changes. I note that a number of “peak bodies” are listed as being consulted during the development of the Bills.¹ I will therefore limit my comments to changes of concern and interest to the Association.

Property Occupations Bill 2013

The bill provides that some persons carrying on the business of a property agent are exempt from the provisions of the proposed Act. In particular:

¹ Explanatory Notes of each Bill.

- Clause 7 exempts a person acting for a related entity in relation to non residential property conditional on that person disclosing in any advertising or contract its relationship to the owner of the assets. The rationale for the change is that when a person is acting on behalf of a related entity they are not truly acting as an agent.²
- Clause 8 exempts agents acting for “sophisticated owners” of non residential property. The rationale for the exemption is that such persons do not need the consumer protection afforded by the Bill.³

The Association understands the policy behind the exemptions and makes no further comment.

Motor Dealers and Chattel Auctioneers Bill 2013

Clause 157(1)(d) provides that a person is not suitable to hold a registration certificate if the person is an “identified participant in a criminal organisation”.⁴ The Association accepts that persons of proven bad character should not be licensed under the proposed Act. The Government has publicly expressed concerns about outlaw motorcycle gangs and have responded legislatively. However, it is becoming apparent that not all members of every gang are people who have committed, or are likely to commit, offences. For this reason, the Association has concerns about this Bill which, if enacted, results in legislation that discriminates against a person simply because that person is a member of a group.

Additionally Clauses 202 and 203 limit the rights of review when a person is refused a license 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 and excluding the operation of part 4 of the *Judicial Review Act 1991* respectively. Again the Act will discriminate against a person only because that person is said to be a member of a particular group. This is undesirable.

Debt Collectors (Field Agents and Collections Agents) Bill 2013

Under the PAMD any person engaging in the collection of debts required a license.

The Bill however distinguishes between a “field agent” and a “collection agent” and requires that only a field agent be licensed.⁵ A field agent is defined as a person who engages in debt collection, repossessions and/or process serving⁶ whereas a “collection agent” only engages in the “collecting of, or requesting payment of, debts” where there is no face-to-face contact.⁷ Both are required to maintain trust

² Page 40, Explanatory Notes.

³ Page 40, Explanatory Notes.

⁴ Schedule 4 of the Bill adopts the definition of “criminal organisation” from Section 1 of the Criminal Code.

⁵ Clause 14.

⁶ Clause 14.

⁷ Clause 19, Clause 10 and Schedule 3.

accounts and can be the subject to an application to the claim fund for consumers negatively impacted by their behaviour.

Rather than requiring a license, a collection agent has “automatic authorisation” to carry on the business of debt collection either alone or with others conditional on them being “suitable”.⁸

The rationale for the “negative licensing” regime is that because collection agents do not engage in face to face contact a debtor has greater control of how they manage the contact by, for example, hanging up the telephone, ignoring correspondence or negotiating.⁹

The Association expresses its concern that collection agents are automatically authorised to engage in debt collection. Whilst it is accepted that misconduct of collection agents will still be captured under that proposed Act, some debtors because of their circumstances are vulnerable to unscrupulous operators even when that contact is by telephone or correspondence. I suggest a licensing regime which catches all those involved in collection of debts is a necessary part of an effective regulatory scheme.

Agents Financial Administration Bill 2013

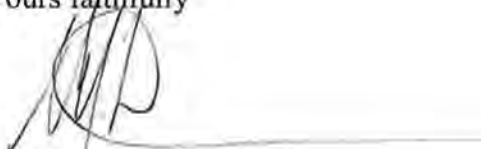
I note that in the proposed Act offences for misleading conduct and misuse of a trust account carry a maximum penalty of two years imprisonment¹⁰ as opposed to the offences of that type currently being indictable with a three year maximum penalty.

The Association considers sensible (with respect), the explanation provided for in the Public Briefing of the Committee by the Deputy Director General that the lesser maximum penalty allows for an infringement notice to be issued for minor breaches whereas serious conduct can be prosecuted under the Criminal Code.¹¹

The Association thanks the Committee for the opportunity to make this submission.

Should you require anything further from the Association I invite contact.

Yours faithfully



Peter J Davis QC
President

⁸ Clause 19 and Part 6.

⁹ Page 4, Explanatory Notes.

¹⁰ Clauses 21, 136, 137 & 138.

¹¹ Transcript of Proceedings, 12 December 2013.