

Parliamentary Committee Briefing Note

For the Legal Affairs, Police, Corrective Services and Emergency Services Committee
Department of Justice and Attorney-General

Background and Policy Intent

- The *Property Agents and Motor Dealers Act 2000* (PAMD Act) provides for the licensing and regulation of real estate agents, resident letting agents (letting agents for community titles schemes), pastoral houses (sellers of rural-based livestock, chattels and real property), property developers, motor dealers, auctioneers and commercial agents (debt collectors and process servers). The PAMD Act also establishes a claim fund for consumers who suffer financial loss from particular conduct of a licensee.

Service Delivery and Performance Commission Review

- In 2008, the former Service Delivery and Performance Commission (SDPC) reviewed the PAMD Act, with the objective being to reducing regulation compliance costs on business while maintaining consumer protection.
- The SDPC report, *Service Delivery and Performance Commission: Report on the Review of Regulatory Reform (Phase 2) – Property Agents and Motor Dealers Act 2000, March 2008*, and the Queensland Government response were tabled in the Legislative Assembly on 23 April 2009. The Government supported or partially supported 22 of the 48 recommendations in the report.
- Relevantly, the Government supported the recommendation to split the PAMD Act into industry-specific laws with requirements relating to the administration of trust accounts and the claim fund to sit in a separate administration Act, and committed to introducing Bills to this effect into the Legislative Assembly by November 2010.

Fair Trading Inspectors Bill 2010

- In a parallel process, inspectorate provisions across all fair trading legislation, including the PAMD Act, were reviewed with a view to harmonisation and consolidation in a stand-alone Act.
- The Fair Trading Inspectors Bill 2011 was introduced into Parliament on 17 February 2011.
- For the Bills under consideration, the Fair Trading Inspectors Bill 2011 will need to be considered by the Parliament shortly after the four Bills representing the splitting of the PAMD Act.

Bills being examined

- The PAMD Act has been split into four Bills:
 - the Property Agents Bill 2010 (provides for a property agent licence and a resident letting agent licence);
 - the Motor Dealers and Chattel Auctioneers Bill 2010 (provides for a motor dealer licence and a chattel auctioneer licence);
 - the Commercial Agents Bill 2010 (provides for a licence for commercial agents, who are typically debt collectors and process servers); and
 - the Agents Financial Administration Bill 2010 (provides for trust account requirements for licensees, the establishment of the claim fund and procedures for deciding claims).

Rationale for splitting the PAMD Act

- Having industry-specific Acts will enhance awareness of regulatory requirements for particular industries, which is likely to increase industry standards, simplify compliance, and increase consumer confidence in the industries being regulated.
- Isolating PAMD Act regulated industries into separate Acts will provide each of the regulated industries with a regulatory focus targeted to the activities of each industry. Consequently, future legislative reforms will be more responsive to marketplace changes in each industry.
- Industry sectors have long advocated for industry-specific Acts.

Other reforms occurring in the split of the PAMD Act

- The Bills also implement a number of other Government-supported SDPC recommendations.
- Property developers will no longer be licensed in the new Bills but their conduct will be regulated by the Bills.
- Pastoral house licensing will be abolished. Existing pastoral house licensees will be transitioned to a property agent licence without needing additional qualifications, while new licensees undertaking the activities currently captured by a pastoral house licence under the PAMD Act will be subject to the same qualification requirements as a property agent licence holder.
- Existing pastoral house licensees will have the benefit of being able to service a wider market as their real estate and auctioning activities will no longer be limited to the rural sector.
- Queensland's two existing pastoral houses – Elders and Landmark – have been consulted, as has the peak body, the Australian Livestock and Property Agents' Association.
- A new category of chattel auctioneer licence will be created to regulate auctioneers of chattels, consistent with the Government response to the SDPC review. Provisions in the Property Agents Bill 2010 provide that where a chattel sale is conducted in conjunction with an auction of real property – for example, a clearance sale which might involve both a residence and its chattels - the real property auctioneer licensed as a property agent will not be required to be licensed as a chattel auctioneer as well.
- During consultation on the Bills, a number of licensed commercial agents raised issues, most notably, requirements that they display their name and licence at their place of work.
- Many commercial agents work from home and the nature of their work – for example, making enquiries about repayment of debts, or process serving – can result in emotionally-charged and sometimes personally dangerous situations. Displaying licence details at their home can place a commercial agent at risk. Changes were made to remove these requirements.
- The Bills also correct minor, technical policy issues in the PAMD Act identified through operational and compliance processes by:
 - Reducing the maximum penalty for certain trust account offences from three years to two years imprisonment to enable less serious offences to be dealt with via infringement notices;
 - Permitting the register of undertakings to be published on the Office of Fair Trading's website; and
 - Creating an offence where a licensee represents that the licensee has received an amount of money when the licensee has not received the amount.

Review of Codes of Conduct

- The Government's response to the SDPC report also supported a recommendation that the existing codes of conduct under the PAMD Act be reviewed. As a result, a new regulation will sit under each of the new Bills, replacing the current Property Agents and Motor Dealers Regulation 2001. It is also proposed that five new Codes of Conduct will be made to sit under the primary legislation. These will replace the six Codes currently under the PAMD Act, with the Code for property developers not being replicated as property developers will no longer be licensed.

Consultation

- The SDPC undertook extensive consultation during its 2008 review of the PAMD Act.
- As part of the Government's implementation of the SDPC's recommendations, a working group comprising representatives from key organisations representing PAMD Act licensees was established to consider issues in the development of the exposure drafts of the Bills. The working group consisted of representatives from the following:
 - Auctioneers and Valuers Association of Australia;
 - Australian Livestock and Property Agents Association;
 - Australian Property Institute;
 - Australian Resident Accommodation Managers' Association Inc;
 - Institute of Mercantile Agents (representing commercial agents);
 - Motor Trades Association of Queensland;
 - Property Council of Australia;
 - Property Sales Association of Queensland;
 - Queensland Law Society;
 - RACQ;
 - Real Estate Institute of Queensland; and
 - Urban Development Institute of Australia (Queensland)
- Exposure drafts of the Bills were released for public consultation on 21 August 2010 via an advertisement in the *Courier Mail* which directed interested parties to the exposure drafts on the Office of Fair Trading website. Licensees were also emailed about the availability of the exposure Bills. Submissions closed on 16 September 2010.
- 40 submissions were received. Of these submissions, 27 were received in relation to the Property Agents Bill 2010, 10 were received in relation to the Motor Dealers and Chattel Auctioneers Bill 2010, 2 were received in relation to the Commercial Agents Bill 2010 and 1 was received in relation to the Agents Financial Administration Bill 2010.
- Officers from the Fair Trading Policy Branch, Office of Regulatory Policy, Department of Justice and Attorney-General, also met with stakeholder peak bodies and individuals on a regular basis during development of the Bills and during consultation on the exposure Bills. These meetings and discussions have continued following the Bills' introduction and in anticipation of implementation.

Fundamental Legislative Principles

- Possible breaches of fundamental legislative principles in the Bills have been examined by the former Scrutiny of Legislation Committee and the Deputy Premier and Attorney General has responded to the former Committee. The responses have been tabled in the Legislation Alert No. 5 of 2011.

- Detailed discussion of the provisions which may infringe fundamental legislative principles is provided at **Attachment 1**.