

Our ref: AG/11/pcr

Your ref: 11.1.1c

The Honourable Dean Wells MP
Acting Chair
Legal Affairs, Police, Corrective Services and
Emergency Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Wells

Thank you for your letter of 16 August 2011 regarding the Legal Affairs, Police, Corrective Services and Emergency Services Committee's (the Committee) examination of the Property Agents Bill 2010, Motor Dealers and Chattel Auctioneers Bill 2010, Commercial Agents Bill 2010 and the Agents Financial Administration Bill 2010. I also note the Committee's public hearings of 3 and 24 August 2011.

As you are aware, these Bills implement the government's commitment to split the *Property Agents and Motor Dealers Act 2000* (the Act) into industry-specific legislation. This commitment arose out of the recommendations made by the former Service Delivery and Performance Commission in its review of the Act.

While these Bills also implement a number of red-tape reduction reforms, for example, the abolition of a number of licence types, they are largely a replication of the existing provisions of the Act. Indeed, the main objective of splitting the Act into industry-specific legislation is to ensure as seamless a transition to that legislation for industry as possible. Accordingly, drafting of the Bills and consultation on those Bills with stakeholders did not extend to consideration of new policy issues.

I note that this approach was recognised, and indeed in many cases supported, by witnesses at the Committee's public hearings, who saw the split of the Act as a sensible and beneficial outcome for industry and, by extension, consumers. There was considerable stakeholder support for the industry-specific Bills in both written submissions and evidence to the Committee.

This being said, it is noted that certain witnesses before the Committee have taken the opportunity to raise a number of issues with the Act and by extension, the Bills.

I note that you have requested the department to summarise the issues raised in both written and oral submissions to the Committee. I note that paragraph 30 of Schedule 8 - *Code of Practice for Public Service employees assisting or appearing before Parliamentary Committees* (the Code) of Standing Orders refers to public service employees providing assistance to committees on submissions. It is also noted that the nature of departmental responses to any issues raised by the Committee will need to adhere to paragraph 6 of the Code which stipulates that when providing information to Committees, while public service employees may describe Government policies and the procedures involved in implementing them, public servants should not advocate, defend or canvass the merits of government policies or alternate policy options. This reflects the overarching role of public service employees to provide expert or technical assistance if requested by portfolio committees when considering Bills, as outlined in Standing Order 133(1)(c).

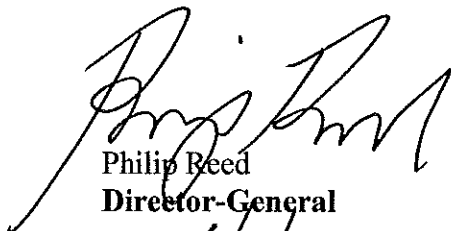
To meet these objectives, please find enclosed the department's summary of issues raised by witnesses, together with technical advice on these issues as appropriate and comment upon the consistency of the issues with the matter at hand – namely, the administrative split of the Act. As requested, departmental officers will be available on 7 September 2011 to meet again with the Committee to provide expert or technical advice on any issues raised by the Committee.

I also note that Committee members at the hearing of 24 August 2011, requested advice on the interaction of the proposed National Occupational Licensing System for property occupations with the four Bills. Please find enclosed a brief overview of how this interaction is anticipated to occur.

I have discussed my response to your letter with the Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State. The department is committed to providing the Committee with responses to any issues identified by the Committee and any other appropriate assistance that the Committee requests.

If the Committee requires any further information, please contact Chris Irons, Director, Fair Trading Policy, on telephone number 3898 0172 in the first instance.

Yours sincerely



Philip Reed
Director-General

Encl.

6/9/11

**Attachment for letter to Legal Affairs, Police, Community Safety
and Emergency Services Committee**

**National Occupational Licensing System, the *Property Agents Bill 2010*
and the *Motor Dealers and Chattel Auctioneer Bill 2010***

National Occupational Licensing System (for property occupations)

In 2008 the Council of Australian Governments (COAG) agreed to implement a National Occupational Licensing System (NOLS). The NOLS is being developed to remove licensing inconsistencies across State and Territory borders and provide for a more mobile workforce. Licence holders will be able to perform work in any State or Territory with a single national licence. The NOLS will reduce red tape, improve business efficiency and the competitiveness and productivity of the national economy. Initially, four occupational areas will be covered by the 'first wave' of the NOLS: electrical, plumbing and gasfitting, refrigeration and air conditioning mechanics, and property occupations.

Following consideration of a range of options for licence categories, scopes of work and licence types for the property occupations, the Property Occupations Interim Advisory Committee, of which Mr Andy Madigan as the representative of the Australian Livestock and Property Agents Association is a member, developed a proposal based on six licence categories.

The Interim Advisory Committee provides advice to the COAG National Licensing Steering Committee (i.e. the authorised COAG decision making entity) on national licensing policy issues and includes a balance of expertise relevant to an occupational area across the fields of regulation, industry operations and practices (from both a union and employee perspective), safety, consumer advocacy, insurance (where relevant) and training.

Please note where the licensing structure proposed for the NOLS includes subgroups not currently regulated in a particular jurisdiction (for example, strata managing agents in Queensland), the principles of the COAG Intergovernmental Agreement for the NOLS state that a jurisdiction will not be required to extend its licensing to cover that subgroup.

As at December 2010 the Interim Advisory Committee proposed the following licence categories and scopes of work to the COAG National Licensing Steering Committee.

| Licence category | Scope of work |
|------------------|--|
| Estate agent | Sale, purchase, lease or management of real property. Act in an agency relationship for the sale, purchase, lease or management of real property. An estate agent is not authorised to conduct an auction of real property or act as a strata managing agent or a business agent. |

The information contained in this document in relation to the NOLS is sourced from the National Licensing Authority's website found at www.nola.gov.au. This information was obtained from the NOLA website on 24 August 2011.

| Licence category | Scope of work |
|---------------------------------|---|
| Strata managing agent | Management of any function of the body corporate or owners' corporation under a strata or community title scheme. Exercise any function of a body corporate or owners' corporation in the management of the body corporate or owners' corporation under a strata or community title scheme. A strata managing agent is not authorised to act as an estate agent or a business agent or an auctioneer. |
| Business agent | Sale, purchase and lease of a business. Act in an agency relationship for the sale, purchase and lease of a business. A business agent is not authorised to conduct an auction of real property or act as an estate agent or strata managing agent. |
| Auctioneer | Conduct an auction of real property. An auctioneer is not authorised to operate a trust account or act in an agency relationship as an estate agent or business agent, operate a real estate or business agent business, or act as an estate agent's representative or business agent's representative. |
| Estate agent's representative | Act under the authority of a licensed estate agent in the sale, purchase, lease or management of real property. An estate agent's representative is not authorised to operate a trust account or operate a real estate or business agent business, or conduct an auction of real property, or act as a strata managing agent or business agent's representative. |
| Business agent's representative | Act under the authority of a licensed business agent in the sale, purchase and lease of a business. A business agent's representative is not authorised to operate a trust account or operate a business agent's or real estate agent's business, or conduct an auction of real property, or act as a strata managing agent or an estate agent's representative. |

The Interim Advisory Committee will continue to provide advice on licensing policy during 2011. Draft regulations and an accompanying Consultation Regulation Impact Statement (RIS) for each occupational area will be released for public comment in the second half of 2011. The public will have 6 weeks to make comments on the proposals at this time. The draft regulations and the RISs will be made available on www.nola.gov.au.

It is anticipated property occupations will commence for the NOLS on 1 October 2012 (subject to final COAG endorsement).

The information contained in this document in relation to the NOLS is sourced from the National Licensing Authority's website found at www.nola.gov.au. This information was obtained from the NOLA website on 24 August 2011.

Property Agents Bill 2010 and the Motor Dealers and Chattel Auctioneer Bill 2010

Under the existing *Property Agents and Motor Dealers Act 2000*, a person needs to be a real estate agent, pastoral house, pastoral house manager or pastoral house director to sell livestock, other than by auction. It is expected that under the NOLS, the sale of livestock, through any method, will not be a licensed activity.

The *Motor Dealers and Chattel Auctioneers Bill 2010* proposes the sale of livestock by auction will continue to be a licensed activity. This is in addition to the proposed NOLS (Real Property) Auctioneer.

The *Property Agents Bill 2010* proposes livestock sales, other than by auction, will no longer be a licensed activity.

Anecdotally, it is thought that the majority of livestock sales occur by auction and as such there is unlikely to be any consumer detriment from the removal of the licence and this is an area of the industry where market forces will regulate conduct.

Consequential amendments are required to implement the proposed NOLS licence categories for property occupations where they conflict with the existing licensed activities contained in the *Property Agents Bill 2010*. That is, all licensing components which are proposed to be included in the NOLS will have to be removed from the *Property Agents Act 2010*. The method by which this will occur is dependent upon when the *Property Agents Bill* is debated and passed.

The conduct (behavioural) provisions contained in the *Property Agents Bill 2010* will remain. A proposed NOLS Real Estate Agent (i.e. a proposed Property Agent as contained in the *Property Agents Bill 2010*) will be required to comply with these provisions. For example, the operation of trust accounts.

Resident Letting Agents

It is expected existing licensed resident letting agents will be deemed across in the NOLS to hold a NOLS Real Estate Agent licence (limited to the letting activities currently allowed under an existing Resident Letting Agent licence).

Property management

The *Property Agents Bill 2010* proposes that a licensee will require a licence for at least two property management activities within the scope of a property agent. That is, leasing places of residence or land and collecting rents. There is no specific licence or registration certificate for "property management" in the Bill. A licensee can opt to specialise in that field.

The proposed policy for the scope of work for a NOLS Real Estate Agent (and this person's representative) includes the management of real property which captures the entire property management function as it relates to real property.

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Legal Affairs, Police, Corrective Services and Emergency Services Parliamentary Committee:
Initial summary of issues raised by witnesses¹ to public hearings into the Property Agents Bill 2010, Motor Dealers and Chattel Auctioneers Bill 2010, Commercial Agents Bill 2010 and the Agents Financial Administration Bill 2010

| Issue | What did witnesses say? | Departmental advice |
|----------------------|---|---|
| Auctions – licensing | <ul style="list-style-type: none"> • The split creates two auction licence categories – real property, and chattels • One licence might be sufficient to auction in all cases, regardless of product being auctioned • The skills required are the same despite the item being auctioned • Auctioning in Queensland is over-regulated compared to other states and territories. | <p><i>Background</i></p> <ul style="list-style-type: none"> • Two licence categories have been established in anticipation of the National Occupational Licensing System (NOLS), which will now cover only auctioning of real property • The government had previously decided that auctioning of chattels in Queensland should be regulated • Victoria, NSW, ACT and South Australia do not licence/regulate chattel auctioneers • There are few complaints about chattel auctioneers <p><i>Comments</i></p> <ul style="list-style-type: none"> • Split of the PAMD Act implemented government decisions in relation to auctioning • However, as noted by witnesses, progress of NOLS has changed the landscape in the meantime for auctioning • As a consequence, consideration may need to be given to further amendments in this area when NOLS commences. |
| Auctions – livestock | <ul style="list-style-type: none"> • Although not wanting to have two categories of licence, ALPAA still want | <p><i>Background</i></p> <ul style="list-style-type: none"> • ALPAA’s desire for licensing of livestock auctions |

¹ Includes both written submission and evidence provided at public hearings

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| Issue | What did witnesses say? | Departmental advice |
|----------------------------|---|---|
| | <p>the auctioning of livestock auctions to be regulated, citing animal welfare and bio-security risks as important considerations</p> | <p>was one of the determining factors for a separate chattel auctioneer licence</p> <ul style="list-style-type: none"> ALPAA were always seeking for the activities of livestock auctioneers to be included under NOLS in the national property agent licence. <p>Comments</p> <ul style="list-style-type: none"> Bills as drafted are consistent with the government's position in this area |
| Auctions – online auctions | Legislation is inadequate in regulating online auctions | <p>Background</p> <ul style="list-style-type: none"> Auctioning legislation has always been drafted on the concept of an in-person auction with hammer and gavel Anecdotal feedback is that there are fewer and fewer of these types of auctions However, difficulty with online auctions or auctions conducted via a videolink is determining where the auction is taking place – e.g. office located in Sydney, lots located in Melbourne, buyers bidding in Brisbane, or auction site located overseas outside of Australian jurisdiction <p>Comments</p> <ul style="list-style-type: none"> There is no simple solution to this issue, something industry agrees with No evidence of large market failure due to this issue, Bills as drafted are consistent with the government's position in this area. |
| Auctions – qualifications | <ul style="list-style-type: none"> Concerned that two licence categories (see above) may result in them having | <ul style="list-style-type: none"> Existing licence holders will transition into licences under the new Bills without having to undertake |

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| Issue | What did witnesses say? | Departmental advice |
|----------------------|---|--|
| | <p>to spend time and money obtaining further qualifications</p> <ul style="list-style-type: none"> Concerned that as there are fewer new entrants into the auctioning industry, there will be fewer training providers and as such, training will become more difficult or costly to access Should be a mix of formal and on-the-job training for auctioneers | <p>more qualifications</p> <ul style="list-style-type: none"> There are a range of online training providers, not all training is face-to-face Industry is not agreed on how much of formal qualifications and how much of on-the-job training is ideal In meetings with peak bodies, Fair Trading Policy has urged them to provide clear suggestions on qualifications Fair Trading Policy is currently drafting regulations to sit under the new Bills and will consult on these <p>Comments</p> <ul style="list-style-type: none"> Bills as drafted are consistent with the government's position in this area Further industry feedback can inform the government's drafting of regulation to sit under the split Bills |
| Conjunctional agency | <ul style="list-style-type: none"> Real estate agents may join forces – “conjunct” – for the purposes of a transaction Agreements are then made about the sharing of commission While the Property Agents Bill 2010 does not specifically provide for conjunctional agency, the Act arguably requires that the conjunctive agent should have a separate appointment with the vendor, but given the | <p>Background</p> <ul style="list-style-type: none"> The primary aim of the legislation is consumer protection and in this case, protection of the interests of the vendor in their dealing with an agent <p>Comments</p> <ul style="list-style-type: none"> The legislation is not intended to cover every permutation or situation and it arguable whether it should be amended to cover conjunctional sales Bills as drafted are consistent with the government's position in this area |

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|-------------------------|---|---|
| | <p>conjunction is between agents, this should not be required</p> | |
| Continuing appointments | <ul style="list-style-type: none"> • There is no need to an end date to be mandated for, in the case of a continuing appointment • There should also be no minimum period (currently, 30 days) of notice to terminate an appointment • For the auction of chattels, there should be a continuing appointment which allows the auctioneer to sell a number of items for their client over a period of time without having to specify each individual item to be auctioned | <p>Background</p> <ul style="list-style-type: none"> • The primary aim of the legislation is to provide consumer protection and the provision of end dates and minimum termination periods aims to provide protection for vendors when they appoint an agent <p>Comments</p> <ul style="list-style-type: none"> • Bills as drafted are consistent with the government's position in this area |
| Cooling-off period | <ul style="list-style-type: none"> • There is confusion about when a cooling-off period should commence or does commence • There was also confusion by the Committee as to the number of times a warning statement should be given, depending on whether there are changes to the contract, and whether it is at the time the proposed relevant contract is given, or at the time the relevant contract is given (only the latter). | <p>Background</p> <ul style="list-style-type: none"> • The Property Agents Bill 2010 in clause 127 provides for when a cooling-off period starts and for how long is lasts and the circumstances under which it might be dispensed with • Substantial amendments in 2010 clarified provisions around cooling-off period • This part of the legislation is always hotly contested and interpreted. It is reasonable to suggest that there is unlikely to ever be consensus on this topic • The judgment in the Supreme Court of Qld in Fletcher v Kakemoto & Anor [2011] QCA 46 notes the revised explanation of the provisions around the giving of a warning statement and the clarity of |

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| Issue | What did witnesses say? | Departmental advice |
|-------|---|--|
| | | <p>intention the explanatory notes provide. The only remaining issue is for circumstances where there are multiple buyers.</p> <ul style="list-style-type: none"> • The position taken when the Chapter 11 amendments were made in October 2010 was that if a seller had to wait until all vendors received a copy of the relevant contract before the cooling-off period began, this could be manipulated by buyers to extend this period to that much greater than the legislated 5 business days. • For example, if a buyer was overseas, the copy of the relevant contract could be mailed to give an extra week for the cooling off period so as all buyers could receive a copy. It was decided that the cooling-off period should run from the date the first buyer received the copy of the relevant contract, and it was up to all the buyers to ensure they received timely copies. <p>Comments</p> <ul style="list-style-type: none"> • These provisions have been substantially consulted upon over the last 18 months • A recent court case confirms the legislative intent • Bills as drafted are consistent with the government's position in this area |
| Forms | There are too many forms and too many "approved" forms. | <p>Background</p> <ul style="list-style-type: none"> • The former Service Delivery and Performance Commission (SDPC) review which gave rise to the split of PAMDA, also made a number of |

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| Issue | What did witnesses say? | Departmental advice |
|--------------------------------------|--|--|
| | | <p>recommendations about approved forms, including abolition of some forms</p> <ul style="list-style-type: none"> • The Government accepted some but not all recommendations • Some of the accepted recommendations were that forms would be reviewed but no timeframe was given <p>Comments</p> <ul style="list-style-type: none"> • As new Acts will be in force, all forms will be remade under the split Bills as a matter of course, in consultation with industry • Bills as drafted are consistent with the government's position in this area |
| Property management – forms | <ul style="list-style-type: none"> • The appointment form should have provision for sole or exclusive agency. • A flat rental market at present is driving vendors to seek out more than one agent to rent their property. | See above |
| Property management – qualifications | <ul style="list-style-type: none"> • Qualifications are not thorough enough, citing examples of training courses lasting 2.5 days • Should be a requirement for specific residential tenancies knowledge as part of the qualifications • Under-qualified people are undertaking property management • Property management constitutes up to 90% of a typical real estate agent's total | <p>Background</p> <ul style="list-style-type: none"> • “Property management” is not a defined term under the legislation, nor is there a specific licence category of “property management” • Licence holders may opt to focus on property management exclusively • Qualifications are currently being drafted as part of drafting of new regulations • Inclusion of new qualification modules would depend upon availability, cost and usefulness |

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| Issue | What did witnesses say? | Departmental advice |
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| | <p>business</p> <ul style="list-style-type: none"> The concerns about training and qualifications were also reflected more broadly in licensing and not just for property management | <ul style="list-style-type: none"> National occupational licensing regulation may also have further details regarding qualifications <p>Comments</p> <ul style="list-style-type: none"> Agency principals are ultimately responsible for who they employ. If a principal opts to employ someone after just a few days of training to be a property manager, it can be argued that principal is not acting in the best interests of their vendors Progression of NOLS may have some impact on this matter Bills as drafted are consistent with the government's position in this area |
| Put and call options | <ul style="list-style-type: none"> Put and call options, or “option to purchase”, is a form of property transaction in which, effectively, a commitment to purchase is made but there remains scope to seek out other, potentially higher offers Legislation is not clear on how such transactions should be viewed in terms of things such as warning statements Case law is divided on put and call options | <p>Background</p> <ul style="list-style-type: none"> This is just one of many variations of the traditional seller-purchaser model of property transactions Legislation is not meant to cover all permutations but rather provide the broad framework Witnesses admit case law is divided – there would be difficulty in reaching a consensus view on the issue in legislation The aim of the split, at least in part, is to make life simpler but the addition of an amendment to cover this transaction would not be consistent with that <p>Comments</p> <ul style="list-style-type: none"> Bills as drafted are consistent with the government's position in this area |
| Representations on price | <ul style="list-style-type: none"> The Property Agents Bill 2010 provides that at a real property auction, agents | <p>Background</p> <ul style="list-style-type: none"> The provision is in place to protect the vendor-agent |

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| | <p>are prevented from advising whether the property is to be offered subject to a reserve price</p> <ul style="list-style-type: none"> It is not possible to explain this requirement adequately to purchasers and an amendment should be considered | <p>relationship. Namely, the agent's primary responsibility is obtaining the best price for the vendor.</p> <p>Comments</p> <ul style="list-style-type: none"> Arguably, disclosing the presence of a reserve price could be seen to be contrary to this, by giving a prospective purchaser ideas about a set price in mind Bills as drafted are consistent with the government's position in this area |
| Resident letting agents – "pooling" | <ul style="list-style-type: none"> Owners of investment units may strike an agreement whereby the collective income from their units be "pooled" and proceeds proportionately distributed, regardless of how long each unit may be tenanted Legislation does not expressly provide for this | <p>Background</p> <ul style="list-style-type: none"> This is a commercial agreement amongst the parties and is one of a number of variations on the traditional buyer-seller or owner-agent model Anecdotal evidence is that this is a very small part of the marketplace's transactions <p>Comments</p> <ul style="list-style-type: none"> Legislation is not intended to cover every variation and transaction Arguable that legislation in fact already has sufficient provisions to cover the parties. In addition, this issue is more than likely already covered by the Commonwealth's legislation for managed investment schemes. Even if the Commonwealth legislation did not apply, such a scheme may be too complex to legislate for to allow for all the permutations of when buyers entered/exited the pool. The aim of the split, at least in part, is to make life |

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| | | <p>simpler but the addition of an amendment to cover this transaction would not be consistent with that</p> <ul style="list-style-type: none"> • Bills as drafted are consistent with the government's position in this area |
| Resident letting agents – licensing | <ul style="list-style-type: none"> • The National Occupational Licensing System (NOLS) proposes that there be an exemption from licensing for short-term (e.g. holiday) letting • This would have a detrimental impact in Queensland for the owners of these lots as they would not have the same protection afforded to owners of lots subject to long-term leases | <p>Background</p> <ul style="list-style-type: none"> • Resident letting agents reside onsite at community titles schemes and conduct letting at that scheme • They play an important role in the state's tourist industry as the first and sometimes only point of contact for visitors who rent holiday apartments. This scenario is most prevalent in Queensland and not repeated to this extent in other states • Existing resident letting agents will, under NOLS, transition to a property agent licence restricted to letting only – in other words, no change • New entrants would be required, under NOLS, to obtain a full licence – in other words, undertake more qualifications than is currently the case • The proposed exemption for short-term holiday letting may be problematic for Queensland, but this is dependent to an extent on how “short-term holiday letting” is defined. At this stage, the definition is not clear <p>Comments</p> <ul style="list-style-type: none"> • While the detail of the qualifications is not yet clear it is likely there would only be a few extra modules involved • Moreover, with a full licence, there would not be a |

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|-----------------------------------|---|--|
| | | <p>restriction to solely letting, thereby opening up possible career options</p> <ul style="list-style-type: none"> • Bills as drafted are consistent with the government's position in this area |
| Residential property – definition | Current definition is ambiguous and in addition that there should be definition of “commercial property” | <p>Background</p> <ul style="list-style-type: none"> • Little, if any, consensus amongst stakeholders on what constitutes “residential” • Different legislation treats the issue differently as well • The Bill only defines “residential” and does not define “rural” or “commercial” <p>Comments</p> <ul style="list-style-type: none"> • The NOLS legislation is likely to seek to define “residential” for the purposes of its licensing categories • No seemingly large consumer detriment being faced by the current definitions • Bills as drafted are consistent with the government's position in this area |
| “Sophisticated” buyers | <ul style="list-style-type: none"> • There are some buyers – sophisticated buyers – for whom the consumer protection provisions of the Property Agents Bill should not apply, because said buyers are not in need of protection • This might include buyers who are publicly listed companies, government entities, buying multiple lots in one transaction or buying development sites | <p>Background</p> <ul style="list-style-type: none"> • Legislation has not sought to distinguish between relative knowledge base of consumers, law is meant to apply to remove any doubt that purchasers may not be clear on the terms of their proposed purchase <p>Comments</p> <ul style="list-style-type: none"> • Bills as drafted are consistent with the government's position in this area |

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|--------------------|--|--|
| | <ul style="list-style-type: none"> Removing consumer protection provisions – such as supply of a warning statement – in these cases would reduce the administrative burden | |
| Split – general | <ul style="list-style-type: none"> Overwhelming support for split One peak body clearly objects and suggested it not proceed until at least after the advent of NOLS for property agents | <p>Background</p> <ul style="list-style-type: none"> Split implements former SDPC recommendations which government accepted. Those acceptances occurred before the full scope and impact of NOLS was clear <p>Comments</p> <ul style="list-style-type: none"> Bills as drafted are consistent with the government's position in this area |
| Warning statements | <p>Number of suggestions about warning statements, including:</p> <ul style="list-style-type: none"> Allowing for their incorporate into the contract, rather than as a separate document; Clarifying when a warning statement needed to be provided; and Whether a warning statement was in fact a useful consumer protection tool at all. | <p>Background</p> <ul style="list-style-type: none"> Substantial amendments in 2010 clarified provisions around cooling-off period Anecdotally, this section of the legislation appear to be the most litigated <p>Comments</p> <ul style="list-style-type: none"> It is reasonable to suggest that there is unlikely to ever be consensus on this topic The primary aim of the legislation is consumer protection and the warning statement is a critical part of that aim Bills as drafted are consistent with the government's position in this area |