LEGAL AFFAIRS, POLICE, CORRECTIVE SERVICES AND EMERGENCY SERVICES COMMITTEE

Members present:

Hon. D.M. Wells MP (Acting Chair)
Mr J-P. H. Langbroek MP
Mr J.P. Bleijie MP
Mr C.J. Foley MP
Mrs B.M. Kiernan MP

Staff present:

Ms A. Powell (Research Director)
Ms A. Honeyman (Principal Research Officer)

EXAMINATION OF THE PROPERTY AGENTS AND MOTOR DEALERS ACT

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 7 SEPTEMBER 2011

Brisbane

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Committee met at 10.44 am

ACTING CHAIR: Ladies and gentlemen, we will commence the meeting. I declare the public meeting of the Legal Affairs, Police, Corrective Services and Emergency Services Committee open. I acknowledge the traditional owners of the land on which we meet today and the elders past and present.

Before proceeding further, for the record I am Dean Wells, the member for Murrumba. I am acting as chair of this committee. Barbara Stone MP is the chair of the committee and is unable to attend due to illness. Other members of the committee are John-Paul Langbroek, the member for Surfers Paradise and deputy chair; Julie Attwood, the member for Mount Ommaney; Jarrod Bleijie, the member for Kawana; Chris Foley, in absentia but will be in praesentia very shortly; and Mrs Betty Kiernan, the member for Mount Isa, who is here with us only briefly. She has to go and lay a wreath on behalf of the Premier at a place in the city. She will return at a later time.

We are examining the bills known as the PAMDA bills. These bills divide the Property Agents and Motor Dealers Act—PAMDA—into three separate industry-specific statutes regulating property agents, commercial agents, and motor dealers and chattel auctioneers. A fourth act will regulate trust account administration for these groups. The committee has held two public hearings for submissions on these bills on 3 and 24 August 2011. To date, the committee has now reached the stage of considering issues raised in the public submissions. The committee is being assisted in its examination of the bills by officials from the Department of Justice and Attorney-General. So now anybody reading the *Hansard* of these proceedings in 100 years time will be completely up to date without having to find the previous iterations.

About the hearing, first I remind those present that the committee's proceedings are subject to the standing rules and orders of the Queensland parliament. I ask everyone present to turn their mobiles off or to put them on silent mode. In the unlikely event of the need to evacuate, please follow staff directions. Members of the public are reminded that they are here to observe the hearing and that they may not interrupt the hearing. In accordance with standing orders, any person admitted to this hearing may be excluded at the discretion of the chair or by order of the committee. Representatives of the media may attend and may record the hearing.

CLAYTON, Ms Julia, Principal Policy and Legislation Officer, Fair Trading Policy Branch, Office of Regulatory Policy, Department of Justice and Attorney-General

IRONS, Mr Chris, Director, Fair Trading Policy Branch, Office of Regulatory Policy, Department of Justice and Attorney-General

REED, Mr Philip, Director-General, Department of Justice and Attorney-General

ACTING CHAIR: In moving to our consideration of the bills today, we have in attendance officers from the Department of Justice and Attorney-General. I welcome Philip Reed, director-general; Linda Woo, executive director—

Mr Reed: Linda is an apology.

CHAIR: Rather than welcome her, we will simply note with gratitude her contribution to the work so far. I welcome Chris Irons, Director, Office of Regulatory Policy; and Julia Clayton, Team Leader, Office of Regulatory Policy. Good morning and welcome to you.

The department provided us yesterday with a written report addressing issues raised in the submissions. Thank you very much for that. Committee members may not have had time to read and familiarise themselves with the detail of the report. So, Director-General, I invite you to take the committee through the department's report summarising the issues and the department's comments, and then members may direct questions to officers.

Mr Reed: I thought I would start, if you do not mind, with some introductory comments and then we might come to the schedule that was attached to my letter of 6 September. Just to couch this, I think I referred in my letter that the response has been prepared in line with standing orders 6 and 30 and provides the department's summary of matters raised and some technical advice around these matters. We obviously appreciate the opportunity to speak about the legislation and its objectives.

Clearly, the four bills implement the government's response to the former Service Delivery and Performance Commission's review of the act. That response was to split the act into four bills, which are the matters before us today, as well as implement a number of smaller red tape reduction initiatives such as the abolition of some licence types. Importantly, the split of the bill was always intended to be a largely administrative exercise and not a broad policy review of fundamental issues. In developing the legislation, the department has always had at the forefront of its thinking the need to ensure the split was as seamless

as possible with as little disruption as possible for industry. Indeed, it is worthwhile remembering that it was largely industry groups who drove the split, saying that it would benefit them to have legislation for their specific industry in one place.

A number of the witnesses at the previous two public hearings have reinforced that point. It is also worth noting that the split of the act was in fact the second phase of reforms arising out of the former commission's recommendations. We have talked about that at the previous hearing—the October 2010 amendments. Certainly, a number of witnesses have also made mention of how the National Occupational Licensing System for property occupations might interact with the split of the act. Whilst national licensing is a Commonwealth driven process, it will apply in this context only to property occupations. My letter actually detailed an analysis of that interaction between the so-called National Occupational Licensing System—or NOLS—and the property agents and motor dealers and chattel auctioneer bills.

I might forgo going through some of the other details that I was going to raise. The key aim of the legislation, as has been noted before, is that we are actually trying to provide or ensure that consumers are protected in what can often be the most significant financial transaction of their life. That is particularly in relation to property. So that is the key element of that bill. The legislation can only do so much in informing and protecting and regulating behaviour, as after a certain point it is up to the parties to exercise due diligence and make their own decisions.

My summing-up of the matters that we have outlined in the attachment that you have asked us to go into in a bit more detail—and we will come to that—is that, consistent with standing order 132, we would be saying that the committee should determine that the four bills before them be passed. So I might ask Chris to actually take us through the schedule in a bit more detail, and you can stop us at any point and ask us questions in that regard, because it is a fairly detailed response. We have tried to pick up issue by issue, bill by bill, the matters raised, what witnesses said and the advice that we provide. But largely, what we are saying is that the bills are drafted consistent with the government's position in this area and hence my summing-up earlier in relation to standing order 132.

Mr Irons: Before I begin, I have just noticed a typo, which I want to draw to your attention, in the attached schedule under the entry for cooling-off period. The schedule quotes there clause 127; it should actually be clause 172. I just point that out to begin with. With that then, I will just go through line item by line item, and please jump in.

Our summary of the issues raised is in terms of both written and verbal evidence to the committee. There are a few entries there to do with auctions generally, and we have attempted to split that up into a few different categories. To begin with licensing, just to clarify, the bills in front of you today create effectively two categories of auction licence—a real property auction and a chattel auction. The real property side of things is expected to get wrapped up in national occupational licensing, as we have referred to before. Then the chattel auctioneers, as the name suggests, is the auctioning of chattels, and that chattel auctioneer's licence will be incorporated into requirements for motor dealers. The second entry there refers to the auctioning of livestock and some particular issues that were raised in that regard.

There was also mention from witnesses about the potential issues with online auctions and the difficulty that both industry and government have in regulating that, and that is to do with the fact that it is difficult to determine exactly where the auction takes place and how it is taking place. Then there is an entry there to do with the qualifications for auctioneers. I suppose the key point there is that some industry groups were advocating that there needs to be a mix of both on-the-job training and module based training for auctioneer qualifications. In relation to the proportion of that mix though, I think it is fair to say that the witnesses did not really have a clear idea of that.

We then move on to the issue of conjunctional agency. This point was raised, I think, in the first hearing on the 3rd. Just to clarify, the traditional model is between a vendor and an agent, and the vendor engages an agent to sell or lease the property as the case may be. Conjunctional agency is when the agent actually enters into an agreement with other agents to market the property on behalf of the vendor. The point was being made there about whether or not there needed to be multiple authorities to actually do that. Similarly, with continuing appointments, there were some issues raised about the fact that there is no need for an end date to be mandated for in the case of a continuing appointment.

In relation to the cooling-off period, as I have said before, there is a typo error there. Some witnesses put forward that there was perhaps some ambiguity about when the cooling-off period began and perhaps some witnesses would prefer a different expression of that cooling-off period. We have attempted to give a bit of background and context as to the provisions as they currently stand in that regard.

Moving along, there is an entry there in relation to forms. We heard from a couple of witnesses about their issues about forms. In the legislation we have what is called an approved form and that is a form that must be used, and we mandate the use of that form in that form, if you like. Then you can have what is called prescribed details in which we set out the details but, as to the form in which that takes, it is up to the parties to come up with that. So we heard a few different statements from witnesses about how they would prefer forms to be in a few different ways.

We got on to the topic of property management. I think it was from one or two witnesses in particular. It is true that under the legislation there is no particular reference to property management as its own function or its own duty. So property management in layman's terms is, if you like, the management of a rent roll at an agency. We heard from one of the witnesses that that arguably constitutes most of the business of an agency. So there were some queries raised there about forms and also some queries there in relation to the qualifications. Again, I would stress that it is not qualifications per se for property management. You get qualifications for a licence or a registration certificate and then you opt to be a property manager, if that is what you prefer to do.

We had some statements about put and call options. Effectively, again, in layman's terms, put and call options are where somebody enters into, if you like, an expression of interest to buy and that expression is entered into, but there is an understanding that after that point there may actually be another purchaser—that is, people may advocate for higher sale prices. Then the issue raised by witnesses is whether or not the legislation needs amendment to account for those circumstances.

Representations on price were mainly in relation to real property auctions and the circumstances that we have at the moment where there are restrictions on the ability of the agent to make some representations about reserve price. We then had a couple of representations about resident letting agents. Just to clarify there, a resident letting agent is a form of real estate licence made specific to a particular community title scheme. A lot of people would know these as an on-site manager or a resident unit manager or a restricted letting agent, but it is basically someone who undertakes letting functions at a particular building—maybe for holiday letting. In fact, probably in most cases it is holiday letting. So we had some statements there about the pooling. One particular witness raised that. We also then heard some issues about the licensing and the potential for the National Occupational Licensing System to have some impact upon that.

We heard statements from some witnesses about the definition of 'residential property' in the legislation. Again, just to confirm there, legislation only defines residential property. Every other form of property is effectively defined against that definition but it is not actually specified in the legislation. So that is one part of it. The second part of it is that some witnesses said that the current definition is not as clear as it could be and that there could be some other factors that might be included.

We had some witnesses talk about so-called sophisticated buyers and they put forward the idea that for sophisticated buyers there might be different provisions about consumer protection. There is a general entry there about the split and about its overall benefits. Largely, the point to be made there is that most parties seem to be in support of the split. Finally, we had a number of witnesses talk about the warning statements that are required for residential property sales and about circumstances around those warning statements under the legislation.

As Philip said, we also provided in response to Betty Kiernan's request the last time around a high-level statement about national occupational licensing and how that is likely to pan out and affect the bills.

ACTING CHAIR: Questions?

Mr BLEIJIE: Chris, can I start at the end on those warning statements, because that was a big part of us talking to previous witnesses. Under 'Comments' it says that it is reasonable to suggest that there is unlikely to ever be consensus on this topic. I am interested in that comment, because from every witness—the Law Society, the REIQ, ADL and everyone we put it to representing all of the industry—there seemed to be a consensus.

Mr Irons: It is important to give a point of clarification to answer that if I may. We are effectively talking about legislation around warning statements in two forms—the current arrangements around warning statements which kicked in on 1 October 2010 and then the situation before 1 October 2010. So that is a point of distinction to make. As Philip noted in his opening remarks, there was a phase before this phase in which amendments were made—and I will refer to them as chapter 11 amendments from this point because they amended chapter 11 of the legislation as it stood then—and that was largely around the process of warning statements. So a number of changes were made then and then they kicked in on 1 October and they applied universally from that point. I take your point that a number of the witnesses seem to be talking about consensus in terms of not so much the warning statement itself but maybe how it is presented as part of the contract. I think a number of witnesses were talking about their preference to have it included as part of it as opposed to a separate attachment. I think when we talk about lack of consensus we are talking there about the circumstances perhaps in the second two dot points in the schedule. With regard to the first one, allowing for their incorporation into a contract rather than a separate document, I take your point on that. It is probably the next two points that are more so about that. With regard to clarifying when a warning statement needed to be provided, I think we heard some evidence—I cannot remember which specific witness it was; it may have been the Law Society—about sophisticated buyers and there are some circumstances where the application of a warning statement may not necessarily be warranted due to the nature of the buyer. So that is one example of lack of consensus, if you like, in that regard.

ACTING CHAIR: Is there any reason at all not to simply incorporate it in the contract, as many of the witnesses recommended?

Mr Irons: With pretty much any provision in these bills, there are a couple of different schools of thought about how you can achieve the same outcome through different means. I will play devil's advocate if you like. At the moment we have a circumstance where we require the warning statement as its own separate entity. If we put ourselves in the shoes of a purchaser and indeed a purchaser who has not made many real estate purchases before and who is unfamiliar with the process such as a first homebuyer or maybe someone who just has not done a lot of purchasing of real estate in their life, with regard to the presentation of a separate document that says 'Warning statement' in very large letters, you could make the argument that that is a good thing because it is a separate thing in that the agent presents it to them and says, 'This is the warning statement. Please look at this. You need to be aware of what this means for you.' The alternative view, which I think is what you are both driving at, Mr Wells and Mr Bleijie, is that the agents think that it would just be as easy to incorporate it into the contract in that the contract is read as its own piece of information and you might as well incorporate the warning statement provisions in that. Those are the two schools of thought effectively. With regard to the bills as they are presented, going back to Philip's point, the aim was to simply replicate what was already in place into that bill. So we have replicated the current provisions over, but that, as you say, is the alternative or one of the alternatives.

Mrs ATTWOOD: So by having it as part of the contract you think there might not be as much emphasis on the warning statement—as if it was written into the normal contract as a part of the contract?

Mr Irons: I think you can infer that from the way in which the provisions are drawn up at the moment. If we go right back to the objective of the legislation, which is consumer protection—and, again, putting ourselves in the shoes of an unsophisticated first-time buyer who has 50,000 other things that they are thinking about such as searches, thinking about building inspections, thinking about pest inspections, thinking about finance, thinking about all of those things—the thinking is that the provision of its own statement is the best method to draw their attention to another thing they need to think about.

Mrs ATTWOOD: Yes, it is the overall thing that they do have some time.

Mr Irons: Absolutely, yes.

Mr BLEIJIE: The flip side to that, of course, is that upon all of that thinking that they are doing they are also getting an enormous amount of paperwork. There is a school of thought that a two-page document that they get separate from a contract is just another document they do not really have regard to. I am not sure if you have received copies yet—I think we have made them publicly available—of what the REIQ and the ADL have provided. The warning statement used to have to be the first and the top sheet of the contract, which, as I understand, under the current legislation can be anywhere. You give it to them and it can be any—

Mr Irons: That is right. So that is effectively the change that occurred from 1 October—one of them.

Mr BLEIJIE: The REIQ and the ADL are advocating that if the warning statement is actually attached—it forms as their precedent contract in terms of the first page—then even an unsophisticated buyer, you would assume, would see the first page of the contract warning.

Mr Irons: I accept that that is possible as well, yes. As I say, there are a couple of different ways of approaching the same outcome, if you like. At the end of the day it is clear that what is intended here is to draw attention to the fact. I think it was Professor Duncan in the first hearing who said that the government legislates up to a point, but it cannot legislate for, I think he said, folly. I think they might have been the words that he might have used. So that is what the government does here. We the government can provide all of the warning, all of the advice and all of the information in the world to say to people, 'Make sure you've done this, make sure you've done that, make sure you think about this,' but at the end of the day the signing on the dotted line is the choice of that consumer. The role preceding that is to make sure that they are well aware of that. So I take your point.

Mr FOLEY: You have to get to them before the eyes glaze over.

Mr Irons: Absolutely.

Mr FOLEY: When there is a whole lot of stuff to sign.

Mr Reed: And hence the sheet that says 'Warning' at the top.

Mr FOLEY: Earlier rather than later in the process.

Ms Clayton: And that is why it is the first part of giving the contract.

ACTING CHAIR: Moving from things that we all understand to something a little bit more complex, I could not understand what your comments meant in respect of the cooling-off period. First of all, as I read the relevant section, it seemed to me that the cooling-off period begins at the time, if I remember correctly, of the signing of the contract.

Mr Irons: Just quoting from the clause in the bill—

The ***cooling-off period***, for a relevant contract, is a period of 5 business days—

(a) starting on—

  (i) the day the buyer receives a copy of the relevant contract from the seller; or

  (ii) if the buyer receives a copy of the relevant contract from the seller on a day other than a business day, the first business day after the day the buyer receives the copy from the seller; and

(b) ending at 5 p.m. on the fifth business day.

Just to clarify, that is what the legislation currently provides for—that is, the day the buyer receives a copy of the relevant contract from the seller.

ACTING CHAIR: Right. My memory was wrong there. So it could be the case that somebody could indicate an interest in purchasing a piece of land. The real estate agent could say to them, 'Yes, that'll be fine. We'll send you the contract.' They can send over the contract. The purchaser could elect not to sign it, but the cooling-off period would begin from the time the purchaser received a copy of the contract.

Ms Clayton: The first part of the provision is to do with who signs first. If a contract is given so that the buyer signs first and hands the signed contract to the seller, then that is when subsection (1) takes place. Subsection (2) is if the buyer signs the relevant contract after the seller. So if the seller gives a signed contract to a buyer, which is a less usual circumstance, I believe, in that case the cooling-off period does not begin until the buyer signs the contract and it becomes a relevant contract and then they notify the seller.

Mr Irons: I think the phrase used here is 'communicated the buyer's acceptance of the seller's offer to the seller'.

Ms Clayton: So it is subsection (2) of 172.

Mr Reed: Either way it has to have a signature on it of either the buyer or the seller. That is the point. It is not a draft.

Ms Clayton: Yes. It has to be a relevant contract rather than a proposed relevant contract.

ACTING CHAIR: Okay.

Ms Clayton: So it is just at the time the contract is deemed to be made. So there are two provisions within the cooling-off period clause. It depends on in which order they have been signed and then the acceptance has been notified as to when that cooling-off period begins.

ACTING CHAIR: So you can assure us that it is not the case that under the legislation that we are proposing here somebody could indicate a mere expression of interest rather than an offer and the other party should then sign the contract and the person who indicated a mere expression of interest—it was not an offer—would receive a copy of the contract signed and the cooling-off period would begin to run. That would never occur?

Mr Irons: If I may, I think it comes down to what you might term is an expression of interest in the circumstances. The way in which the legislation is drafted talks about 'relevant contract' and then there are terms around what constitutes a relevant contract. So the issue in the scenario that you just outlined would be whether or not an expression of interest, in whatever form or manner that expression of interest takes, actually fills what the legislation proposes a relevant contract would be. If it does, then those provisions would apply accordingly.

ACTING CHAIR: Okay.

Mr BLEIJIE: I think Professor Duncan raised in his evidence when he was here though that for the first element of that clause of the cooling-off period a situation where the buyer signs first as the offer and gives it to the seller and the seller signs but does not give a copy of the contract to the buyer. What happens in that regard with the cooling-off period—that is, if the buyer never receives a copy back, because does not the first provision say when the buyer receives a signed copy of the contract?

Mr Irons: In this case the phrase that is used in the legislation is 'communicated the buyer's acceptance of the seller's offer to the seller'. Is that the clause you are referring to?

Mr BLEIJIE: Let us say I am a buyer. I have a blank contract. I sign it and give it to the seller. The seller signs it but never returns it to me. There is a binding contract though, because it is all signed, but when does the cooling-off period start in that event?

Ms Clayton: It is the day the buyer receives a copy of the relevant contract from the seller.

Mr BLEIJIE: So the cooling-off period will not have started? If the seller does not give a copy of the contract back for three weeks to the buyer, then the cooling-off period will not start?

Mr Irons: On the face of that provision, yes, that is right. As we have seen over recent weeks at a national level, sometimes what appears clear in the legislation does not always get interpreted that way by the courts.

Mr Reed: I think it is a matter of 'don't mention the war'.

Ms Clayton: Again, they would be unusual circumstances because a buyer is motivated to sell and they are motivated for their cooling-off period to—

Mr BLEIJIE: A seller is motivated to sell.

Ms Clayton: Sorry, a seller is motivated to sell. So it would be an unusual circumstance where the seller would not be providing the relevant contract to the buyer to begin the cooling-off period, because the faster you get that happening the faster you get the cooling-off period coming to an end.

Mrs ATTWOOD: I want to draw your attention to the auctioneer licence. Some of the witnesses at the hearing had remarked that there was a very low take-up rate for the auctioneer licence and quoted that there was only one last year for the Brisbane area for the pastoral licence. Do you have any comments to make about that statement?

Mr Irons: We have had that same feedback as well from the relevant peak bodies. I think some of the witnesses said—and I cannot remember which ones—and I have heard it said in some other forums as well that auctioneering is kind of like appearing in a play; that there is a certain amount of performance, if you like, with the auction and you have to be able to stand up in front of a crowd of people. It is quite different, for example, from showing somebody through a house or any other method of sale. There is actually a demand upon you at the here and now to stand up and get a sale at that point in time. It is fair to say that not every person is necessarily suited from a personality point of view to that. I think that is an important point to make.

It is like any other industry sector. Whether or not there is any sort of attraction to be a part of that industry sector, it comes and goes with the territory. We heard from a few of the witnesses that auctioning via the old method, if you like, of the hammer falling, is almost a thing of the past now and that a lot of the work is being done online. So it seems like auctioning as a general concept is moving into something of a different phase.

The principle of it is still the same, but the physical circumstances of it certainly are changing and, therefore, the entry into the industry is changing as well. I think that then refers to the comment I made earlier about the qualifications. Some witnesses talked about the use of on-the-job training and some witnesses talked about the value of actually doing specified modules and in what proportions they should be done and which is preferable. There is that aspect to it as well. I do not know if that answered the question.

Mrs ATTWOOD: Now that we are on the training part, I will go to my next question. The current education requirements focus heavily on real property auctions and that training needs to reflect the broad nature of goods and chattels. Has the department considered the new training requirements in relation to the legislation?

Mr Irons: The short answer is yes. We have had some considerable discussions over the last 12 to 18 months with the witnesses who appeared talking about auctions, firstly, on the split of the act generally and then more lately about qualifications because that will be the next phase of it. So we certainly have been talking to them about it.

Again, the issue is the extent to which we combine on-the-job versus module training. We are more than happy to take that advice from those groups about what achieves their circumstances best, because the other point they raised was that if you nominated module based training as a priority, if you like, there is a difficulty in actually finding a registered training organisation to deliver those modules that way. I cannot remember which witness it was—it might have been the Auctioneers and Valuers Association—but they said that was actually a bit of a practical challenge for them perhaps.

Mrs ATTWOOD: So that is another phase after the legislation, is it not? Sorting out the training requirements, what suits, how to get people to train.

Mr Irons: That is right. We have given an undertaking to those groups that we will work with them to get the best outcome that is possible.

Mrs ATTWOOD: If you cannot get a hold of a registered training organisation to deliver auctioneer licences, for example, which are few and far between these days, you would have to look at online training, preparing modules yourself?

Mr Irons: Yes, that is right. The other option is the actual on-the-job training where you basically go to some auctions and you participate in some way. That gives you the experience of actually being at an auction, having the feel for it, deciding whether or not you are actually of the right frame of mind, I guess, to actually stand up and do it. If you are going to have that 'old fashioned way', you need to know whether or not you actually are suited to that particular way of doing things.

Mr Reed: I think you still see that in the real estate industry, where you will have the auctioneer supported by one of the other members and you see that they are actually picking up a skill on the job during those auctions.

Mrs ATTWOOD: It is how you rate that skill, I suppose; it is due to experience.

Mr Irons: Absolutely.

Mr LANGBROEK: I note from your departmental advice though that you are aware of this issue, and that in Fair Trading I see from the advice you are consulting with the industry and you are going to be proposing regulation to sit under the split bills.

Mr Irons: That is right.

Mr LANGBROEK: So, hopefully, they will have some of those concerns addressed.

Mr Irons: That is right.

Acting CHAIR: What does one say to the witnesses who said to us that it is absurd that they can sell somebody's house in the morning but they cannot sell a box of nuts and bolts in the afternoon?

Mr Irons: I acknowledge that some stakeholders have raised that point and have found it an anomaly, to say the least. It largely comes down to how the National Occupational Licensing System will finally pan out. At the moment, our thinking is based around what we anticipate that to be, but it is not

entirely clear how it will pan out. I think once we get a really clear picture on how national occupational licensing proposes to treat real property auctions and the various states and territories that are involved in this space—acknowledging that some states and territories do not actually regulate chattel auctioneers the same way that Queensland does—the government can consider what the ramifications will be as a result.

Acting CHAIR: Does that mean that we will go ahead and do this and he will need to have two licences in order to do those two jobs until the national scheme comes in? Or does it mean that—

Mr Irons: You are effectively right. Putting aside national occupational licensing for a moment, the proposal is that under the split of the legislation there will be a category of licence for real property auctions and there will be a category of licence for chattel auctioneers. So if somebody is doing both then, yes, feasibly there will be a requirement for two licences. We talked at the last hearing about the exception for that to occur in one specified circumstance. As to any sort of consideration about whether or not there is any other circumstance to consider, that will be I guess a matter for the government once those national occupational licensing regulations are made more clear.

Mr FOLEY: Could you do a grandfathering clause on that? What time period are we talking about between the national scheme?

Acting CHAIR: It is less than a year, is it not?

Mr Irons: Thereabouts. I think at this stage it is meant to commence on 1 July.

Acting CHAIR: What about the member for Maryborough's suggestion about a grandfathering clause which allows people to continue to sell nuts and bolts in the afternoon if they sold a house in the morning until such time as the National Occupational Licensing System comes in?

Mr Irons: I guess that remains a possibility. I am just talking to how things currently stand at the moment. The legislation as it currently stands is drafted one way. Certainly, there are possibilities.

Ms Clayton: Transitional provisions allow for whatever you are doing at the moment—you will be given the licences that allow you to do that continuing onwards. You will have to hold the two licences, but you are still able to do what you can do now. The transitional provisions will allow you to do that post the enactment of this legislation should that go ahead.

Mr BLEIJIE: I think the issue is the duplication and the costs to have the two licences, considering if you have the skills to sell a farm surely you have the other skills.

Ms Clayton: I cannot speak for what will happen with the fee schedule under the new legislation. Certainly, under the current legislation, if people hold more than one category of licence they do not pay two full licence fees, so cost is not really an issue. It is really just the physical possession of two licences. They pay an extra application fee for an extra category of licence. So they pay their main licence fee. If you currently hold, for example, a real estate agent's licence and a property house manager's licence, you pay an application fee for both, which is about $128.60 at the moment for each, plus you pay your principal licence fee but you do not pay the second principal licence fee.

Mr BLEIJIE: I think we are talking about the auction licences though.

Ms Clayton: I am just giving you an example of what is under the current regulation under PAMDA. That may well be an option to sit under the new Property Agents Bill.

Mr Irons: To follow on from that point, for new entrants into the industry I guess the division of two licences recognises that there might be some new entrants, acknowledging the point that was made before that perhaps there are not that many new entrants anyway. The point remains that there may be new entrants who simply do not want to auction real property. That happens. There are people who might, for example, want to specialise in the auctioning of art, flowers or livestock and who have no interest whatsoever or perhaps not even the wherewithal to auction real property. So the option of a discrete chattel auction licence can actually satisfy some of those new entrants if it gets to that point. I take the point that there might not be many of them, but it does actually exist for that purpose as well.

Mr Reed: I think we said in the attachment that the anticipated property occupations will commence under NOLS on 1 October 2012, but that is still the subject of COAG processes.

Mrs ATTWOOD: One of the people we talked to at the last hearing, Andy Madigan from the Australian Livestock and Property Agents Association, suggested that an auctioneer licence under the national scheme would apply to all auctions of all things—real property, chattels, including livestock. The 2010 communique provides for a proposed auctioneer licence which allows for the sale by auction of real property; it does not propose to allow an auctioneer to auction all things or to be an unrestricted auctioneer licence as suggested by Mr Madigan. Can you comment on that again?

Mr Irons: My understanding is that the national occupational licensing process has gone through a few different iterations over the years. It started out at one particular point and it has, if you like, evolved over time and it still is evolving. My understanding is that at this point in time when we refer to auctioning under the National Occupational Licensing System it is about real property only.

Acting CHAIR: Are there further questions from honourable members?

Mrs ATTWOOD: I want to go back to where I saw something about forms. It says that some of the accepted recommendations were that forms would be reviewed but that no time frame was given. It seems to me that there is an awful lot of work in reviewing the forms to make it less complicated for people.

Mr Irons: There is.

Mrs ATTWOOD: It is pretty bureaucratic at the moment. What are you anticipating the time frame in relation to the bill could be? Should that not be part of the new legislation to upgrade the forms?

Mr Irons: You are absolutely right. The process to develop and design forms is time consuming and laborious, absolutely. That is why we have actually started the initial body of work around that. Forms will have to be remade in any event because there will be four new acts under which those forms will be issued. That is the starting point. They will have to be renumbered according to the new sections.

Mrs ATTWOOD: So you would already know what that looks like.

Mr Irons: We have started the process. As a matter of course, we consult with industry whenever we go about the process of redesigning or redeveloping a form. We have to because there is no point for us in developing a form if it is not going to be useful for industry to use.

Mrs ATTWOOD: I think from memory some of the people at the hearing said they had developed their own forms, or compacted forms. I do not know whether they are shared or whether you are aware of them.

Mr Irons: That is right. It is probably not a bad moment to clarify what is meant there. The legislation talks about, as I said before, approved forms which is a form that we, the department, develop and issue for use; it is a form that must be used. Then there is also another variation where we outline all of the things that can and should be included in the form. They are the prescribed requirements and then it is up to individuals to ensure that they include all of that in whatever form they talk about. It is important to say that when we talk about forms that is distinct from a contract itself. We do not regulate the actual contract itself. The contract is free to be drawn up between parties. The evidence that we heard is that there is a particular contract that most people are familiar with and most people use as a matter of course, but it is certainly not by any means the only contract that anybody can use.

Mrs ATTWOOD: So people can actually use their own forms as long as they have got the required information as far as the regulation is concerned?

Mr LANGBROEK: It is obviously not the department's role to advise the committee about this, but I am just a bit concerned that in 17 areas where we have departmental advice it says that the bills as drafted are consistent with the government's position in this area, which basically says to me that no matter what witnesses are saying, the government has decided—the minister has decided—that whilst some of these things may be taken into consideration for the future, we are splitting the bills the way they are, we are not changing anything. I just wonder about that.

Mr Reed: That is a normal process of government. As I think we have pointed out on a number occasions, the government has gone through extensive consultation prior to this committee's consultation process, picked up elements of what people have said, tried to find a position which balances the various views in the community and has then brought forward, through a cabinet and government process, a bill that the government has then introduced in the parliament. It is the government's bill. It is consistent with the position that was taken by the government prior to introduction and that is why we make this comment that the bill, therefore, is drafted in a form at the moment which is consistent with the government's thinking on this matter having gone through a consultation process. It might have been different if it was a bill that suddenly emerged and there had not been consultation, but here I think there has been extensive consultation prior to the committee's consideration.

Acting CHAIR: I would like to ask you a question about the red tape reduction. It seems to me that the red tape reduction in this is firstly by virtue of the fact that each of these professional areas is going to be able to pick up a particular volume and that particular volume is going to tell them what they need to do. They do not have to plough through a much longer text in order to get to where they want to be. The second element of the red tape reduction is that we are eliminating certain licences. I am not sure that I am in favour of this. We are eliminating the property developer's licence, which is $360,000 or something like that. How many other licences are we eliminating and what is the revenue forgone in respect of those licences? Please feel free to take this on notice if you wish, but maybe you could at this stage indicatively give me an example of some of the licences that we are abolishing and why it is that we are abolishing them.

Mr Irons: You have highlighted the first one, the property developer's licence, and probably the other main category of licence being abolished is what we would generally call a pastoral house licence and within that broad category there are a few subcategories, if you like, of pastoral house. To address that one first, if I may, there are just two pastoral houses in Queensland, as I understand it. Pastoral house work is defined in the legislation as being certain things, but effectively you can think of it in terms of pastoral houses do defined bodies of work depending and relevant to their location in rural Queensland. I guess going back historically that category of licence was established in recognition of the fact that in decades gone past it would have been very difficult for somebody in a remote and rural part of Queensland to undertake some training to get a licence. There was a time when licensing actually required you to sit an exam in a particular place. That would have been difficult for some people in rural areas so that category of licence was established.

I guess as time has gone on that difficulty in obtaining training has diminished a bit through the provision of online training and through other delivery methods as well. So at the end of the day the government accepted the commission's recommendation that there was not so much of a need to establish a pastoral house category of licensing. Those existing pastoral house licensees will be transitioned across into the relevant category under these proposed bills. That is that category of licensing. As you say, in terms of revenue we will have to take that one on notice.

In terms of property developers, historically that category of licence was established around the so-called marketeering activities that were particularly prominent in the early part of the 2000s and the late 1990s, as I understand it. That licensing category was established partially in response to that. Again, the commission's recommendation was that that licensing was not needed any longer because the conduct would still be regulated. We continue to regulate conduct but we do not actually require the licence. They are the licensed categories that will be abolished.

Acting CHAIR: I do not know why, if we have to increase the application fees for QCAT, we want to abolish any licence fees at all. I would be grateful if you could let me know what the revenue foregone is overall for the lot of that because it is not clear to me that this is a really good time to be abolishing licensing fees for anything.

Ms Clayton: Property developers aside, those who conduct their activities under the pastoral house categories of licence, if they carry on those activities will still have to be licensed in some format. So there will be no revenue forgone in respect of those categories of licence. They will just be transitioned into another category of licence.

Acting CHAIR: So they will no longer have a certificate that belongs to a bygone age and they will not any longer have it on their wall and feel moved to recite lines from Banjo Paterson and Henry Lawson.

Mr Irons: They will have another one.

Acting CHAIR: And that is the only change. If it does not resound in the revenue I suppose it is all different but—

Mr Reed: The likelihood is that it is the money that was referred to at our previous hearing, the $363,000. That is probably the overarching amount of money that is forgone. We are happy to check that.

Mr Irons: Just while we are talking about pastoral houses, it is a different form of licensing in the sense that my understanding is that most pastoral houses will actually have an arrangement with the licensee to take care of their licensing arrangements and that is quite different, if you like, from other forms of licence where if I wish to get a licence I will go out and do the qualifications and get said licence and then perhaps seek a role with an agency. It is slightly different in the pastoral house sector. There is a possibility that upon the commencement of these provisions you might have some current licensees who may either not be opting to go forward or their employer, the pastoral houses, may be opting not to continue that relationship. So there is that possibility.

Acting CHAIR: So you think there might be movement on the station when the word gets around that the licences are no longer available?

Mr Irons: Absolutely.

Mr FOLEY: They will still be able to salute themselves in the mirror though, mate.

Mr Irons: It is a fair point, because even if it was only the name of the licence, that is still a change for people who hold those licences. You have to acknowledge that. We spend a fair bit of time talking to both Elders and Landmark, who are the two pastoral houses in Queensland, and their peak body as well, and we will continue to do that as it goes along to make sure that there is actually some form of information and education that everybody is aware of.

Mrs ATTWOOD: Going on to fees again, just following on from the Acting Chair's point, are licensees expecting to pay a similar amount of fee for their licence or, because of the red tape reduction, does it mean that they are going to be paying less in fees for different licences? How does that work in terms of less paperwork?

Mr Irons: I cannot comment on the actual fees at the moment, but they will be ultimately set through government processes. I guess all that I can do is refer to the overall objective of this exercise, which was to make it as seamless as possible and as minimally disruptive as possible. We have said to the stakeholders all along that the biggest change that you should see is that there will be a different name of an act under which your licence is issued, otherwise it should be business as usual. Whilst I cannot comment on the actual fee amount, I would put forward that that is the objective that we are working under.

Mr Reed: Which is that principle of transparency that we had a discussion about in our private hearing as to why we were doing it.

Acting CHAIR: Yes. Quite obviously, a thousand times a day in a thousand different places some professional is going to pull out a volume and instead of saying, 'Just wait a minute,' while they page through half a dozen pages, they will only have to page through one page and it is going to save a few seconds out of the life of a thousand people a day, which is all to the good. This is obviously a major benefit of the work that you have done.

Mrs ATTWOOD: It is an administrative saving more than anything. Because of the red tape reduction you are saving money in administration of the licences.

Mr Irons: For those licensees, yes.

Ms Clayton: And we did achieve some other red tape reduction measures for commercial agents.

Mr Irons: I know that we have not gone into the area of commercial agents in our discussions, but there are actually some additional red tape reductions for that category of licence as well. I know that all of the witnesses have focused largely around property and real estate, but we have the Commercial Agents Bill as well. Just if I might take a moment, commercial agents, just to clarify, are debt collectors and process servers largely, also known as mercantile agents in the industry. Understandably, because of the nature of their work, if you are a commercial agent you would not necessarily want people to know where you live and you also would not necessarily want people to know your details. The current requirements are that if you are a commercial agent you have to display your licence details at your place of business. A lot of commercial agents work from home. So, quite understandably that actually represents a bit of an issue for them. They have some sensitivity about having to display details where they live. So we have actually done away with that requirement after some representations from commercial agents. That is an example of one of the red tape reductions that we have done for that category of licence.

Acting CHAIR: Colleagues, we are very grateful to you. Thank you very much. I think we have gone as far as the committee needs to go at this stage. We are very grateful to you for your patience, your diligence and your assistance. Thank you very much. Would honourable members please go back to the committee room we were in previously so that we can continue the process of the work that we were doing there. I would like to thank members of the public who have turned up for their interest in the work of the committee and I declare the committee's public meeting for the examination of the PAMDA bills closed. I note this final nail in the coffin of the extinction of the PAMDA.

Committee adjourned at 11.43 am