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**From:** Bill Duncan  
**Sent:** Thursday, 28 July 2011 9:04 AM  
**To:** Legal Affairs Police Corrective Services and Emerg Svc Committee  
**Subject:** Submission into division of Property Agents and Motor Dealers Act 2000 (PAMDA)

Dear Ms Stone,

I acknowledge your request for submissions into the four Bills, the Property Agents Bill, the Motor Dealers Chattel Auctioneers Bill, Commercial Agents Bill and Agents Financial Bill presently before the House. I understand the time for written submissions has passed but as I only received your request yesterday and as the hearings commence next week, I would ask your indulgence to accept this late submission.

I should give you a little of my background and some history with respect to the existing legislation. I am a Professor of Property Law at QUT and am the author and co author of a number of books on Queensland property law and transactions over the past 35 years. I am the sole author of the book Real Estate Agency Law in Queensland which was last published in its 4<sup>th</sup> edition in 2006. It requires updating now particularly since the changes wrought by the well received and long overdue significant amendments to PAMDA introduced by the former Minister for Fair Trading, The Hon Peter Lawlor which commenced on 1 October 2010. It also cannot be updated until the issue of the division of the Acts is finalised.

The current PAMDA legislation was initially prepared as a Bill under the direction of The Hon Denver Beanland in 1998 after a long and extensive enquiry into its predecessor the Auctioneers and Agents Act 1971. However, it was not enacted immediately and there was a change in Government with the portfolio responsibility being transferred to the Minister for Fair Trading (The Hon Judy Spence) who delayed the passage of the Bill until an enquiry into 2 tier marketing practices, principally on the Gold Coast was completed.

I was engaged as a consultant by the Minister through the Commissioner for Consumer Affairs (then Neil Lawson) between April and July 1999 when I presented a report to the Minister recommending a revision of Chapter 11 of the Act which introduced Warning Statements and cooling off periods in residential sales in Queensland. This report was tabled in Parliament during the second reading speech for the Bill. After further consultation, the Bill was enacted to commence in on 1 July 2000 principally in its current form.

I had spoken to both The Hon Denver Beanland (when he was Attorney General with the carriage of the matter) and The Hon Judy Spence on separate occasions about the division of the very long Act into a number of shorter more industry specific Acts. However, the former really did not have time to undertake this before his party lost government and by 2000, after the two tier marketing consultation, the Minister was anxious to get something on the statute books as soon as possible to meet this phenomenon and the Act was enacted in its present form.

Having extensively had reference to the existing PAMDA legislation both for research, teaching and in practice (I am an active specialist consultant to Allens Arthur Robinson solicitors) I have long advocated the division of the Act into more focused specific parts as has now been done with these Bills. The current Act has always been unwieldy to deal with and over the years I have spoken to many practitioners who have not understood why it was enacted in its current form in the first place. The particular professional groups covered by the Act have completely different functions, eg real estate agents, motor dealers and commercial agents with little relationship to each other except that their administration is under the supervision of the same Minister.

The initial legislation enacted in 1922 was called the Auctioneers Real Estate Agents, Debt Collectors and Motor Dealers Act 1922 which incorporated the licensing regime for all of these professions. This was replaced by the Auctioneers and Agents Act 1971 which did not address this particular matter which was again not considered when the foundations of the existing Act were laid.

I think all of these professions have grown since 1922 and I find it difficult to justify their legislative treatment in the same way since 1922. Also ,in my study of the Divisions wrought by the Bills, I have found it much easier to access provisions when addressing issues and think that the Agents Financial Administration Bill also reflects the modern approaches of this Parliament. A good analogy might be the Taxation Administration Act 2001 which covers the same processes rising from the Duties Act 2000,the Payroll Tax Act 1971 and the Land Tax Act 2010.This is very accessible and neat legislative practice and saves obvious repetition of the same processes in separate Acts.

All in all, I understand through my professional engagement that the division of these Acts has the strong support of the legal profession and the real estate agency profession who were,I recall calling for this change in 1999 when I was undertaking my Report to the Minister.

Can i take this opportunity to strongly commend this change to your Committee and would be pleased to attend any public hearings if you considered it necessary for elaboration

Again ,I apologise for the lateness of this submission but I only received the invitation yesterday in the mail

Yours sincerely

Bill Duncan

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