



Speech by
**Mr DENVER
BEANLAND**

MEMBER FOR INDOORROOPILLY

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PROPERTY AGENTS AND MOTOR DEALERS BILL

Mr BEANLAND (Indooroopilly—LP) (5.47 p.m.): I rise on behalf of the Opposition in relation to this legislation as the shadow Minister is ill today. Unfortunately there seems to be a lot of illness around. At lunchtime the Minister's officers briefed me in relation to a range of amendments to this Bill that are to come forward this evening. I understand the Minister will be moving 10 pages' worth of amendments—more than 30 amendments.

The Opposition is concerned about this piece of legislation. The coalition is opposed to it because it does nothing for the various industry sectors. In fact, industry has complained that this Bill is unworkable, is bad news for jobs and is flawed. That is disappointing considering the amount of time that the legislation has now been around. The Minister will remind me later, I am sure, but when the change of Government occurred and the coalition came to office, no work had been done on this Bill. I originally thought that the legislation had been updated. However, that had not happened and we had to start from scratch. The Minister had a very workable piece of legislation when the Labor Party came to office.

The Minister has made not only a range of changes that he opposed previously but also a whole host of other changes. While there are large sections of the legislation which existed under the former coalition Government, there are a whole range of new sections put in place by this Government. There is no question that the legislation needs to be updated and that changes are necessary, because the industry is a very dynamic one. In fact, it is fair to say that there are entrepreneurs in the real estate industry, the motor dealer industry and amongst commercial agents, together with restricted letting agents. All of these industries are entrepreneurial areas in which one has to make the best of it for oneself.

However, there is a need for some parameters to be set, and that is what this legislation does. This industry encapsulates a very important area of small business. Having said that, I cannot help but notice that the Labor Party has made a grab for the Auctioneers and Agents Fidelity Fund of some \$40m or \$50m. It previously made attempts to run down that fund. However, this legislation abolishes that fund and replaces it with a claims fund to be funded from consolidated revenue from Treasury. Therefore, income that would have gone into the Auctioneers and Agents Fidelity Fund will now go into consolidated revenue. Apart from that, the legislation is flawed and unworkable in many aspects. Should the Government pass the legislation, it will not be long before it is back in the Chamber with major amendments, because I do not believe that the Government has done its homework on this legislation.

When looking through the Bill I am reminded of the Government's mantra prior to the last election of jobs, jobs, jobs. It is now dead, dead, dead, particularly in areas which relate to this legislation. Small real estate or motor vehicle dealer businesses are important for towns and cities around our vast State. These industries generate a great deal of jobs in small communities, as they do in south-east Queensland. However, it is little wonder the jobless rate is rising when this House considers legislation such as this. Not only are those involved in the industries which come under the ambit of this legislation unhappy, but a number of consumer groups are also unhappy about various aspects of the Bill. Therefore, it is not necessarily good consumer legislation either.

I will mention a number of aspects of this legislation. First, I refer to the qualifications for a licence being based on competency and suitable criteria accorded to particular categories of licences. No comment has been made by the Minister about the modules for competency and suitability. I understand that they are yet to be resolved with industry. I have not seen any reference to them in the legislation. I presume they will be determined down the track, but I would have thought that there would be some indication of what they will be.

I do not know—I have not been informed—whether the Government has reached agreement with industry or whether it will override industry on these modules for industry groups. However, the Government needs to give some indication of the state of play. In the past, the REIQ has run various training sessions to gain accreditation for its members, whether they be principals or salesmen. It is unknown whether that will occur through TAFE. What is the situation? I presume it will be done by regulation because it is not covered in the legislation, but I would have thought there would be some indication as to what the situation will be. However, there is no indication contained in the legislation.

I refer to the mandatory code of conduct. Many industry groups currently have voluntary codes of conduct which have been used for some time. Some work better than others; some do not work as well as they should. However, according to the Minister's second-reading speech, the Government is now proposing mandatory codes of conduct. What is the state of play for those mandatory codes? Have they been set in place? Have they been arrived at after discussion with industry? From looking at the legislation, I presume it will be done by regulation. That again raises a number of questions about very important aspects of the legislation, because once the legislation is put in place the other will follow, as night follows day.

There should be some indication as to what stage these processes are at, whether they meet industry requirements and whether industry has been consulted in relation to a range of aspects contained within the mandatory code of conduct. As I said, most industry groups already have a code of conduct. Some work well; some do not work as well as they could. There is no question about that. Once we move to a mandatory system, there is a need to indicate clearly what the position is. Those are just a few concerns I have in this regard.

I now turn to sole agency arrangements. The Government has put in place sole agency arrangements with a sole agency period of some 60 days. It is currently 90 days. I remember when we were in Government the then Labor Opposition opposed a change to 45 days. However, this legislation returns it to 45 days because there are 14 days in which the sole agency arrangement can be renewed. I am not concerned so much about that provision, but I am concerned about its workability. If it is going to be 60 days, which in reality is probably 45 days, it will be very difficult—almost impossible—for the sole agency arrangement to work, by the time the agent starts to promote the property. I do not think the time for sole agencies should be 180 days. I think 90 days is a reasonable time. When I realised that the shadow Minister was not going to be on deck to deal with this issue, I consulted with industry. It is obvious that it is very unhappy about this. It, too, believes it will be unworkable. Therefore, I again return to the old argument about the workability of this legislation.

Not only is there a problem in relation to agents; there is a problem in relation to auctioneers, because they come within the same requirements and also face the sole agency 60-day maximum. That simply will not work, taking into account when the auctioneer starts to promote the property and the whole process that has to be gone through. There is simply insufficient time to allow for sales to occur under this proposal. Currently auctioneers have sole agency for 90 days. What we are looking at practically is 45 days, which is the aggregate time in which they have to make things work in a proper manner. Consumers will not be able to make informed decisions either, unless there is adequate time for auctioneers or real estate agents to promote properties in an appropriate way.

Mr BEANLAND (Indooroopilly—LP) (8.30 p.m.), continuing: As I was saying before the debate was adjourned, the Property Agents and Motor Dealers Bill covers a wide range of industries and small businesses across Queensland. It deals with not only real estate agents and motor dealers but also restricted letting agents, pastoral house arrangements, auctioneers, property developers, marketeers and commercial agents who look after debt collection. So the legislation covers a wide range of aspects. Therefore, it is only appropriate that we look at a range of issues relating to those industries.

In relation to sole agency arrangements, it is quite obvious from looking at the Bill that sole agent arrangements are going to prove unworkable within a short period because the Bill specifies the maximum term for an auction at 60 days. It effectively dictates that the property must be auctioned in 30 to 45 days from the date of listing. As I have indicated, the time frame is simply too short for most properties to be promoted. It does not allow prospective purchasers sufficient time to undertake proper inspections. We have to think of not only the seller but also the purchaser. They also have to have time to undertake proper inspections and adequate time to arrange finance and other matters. This is a two-way exercise. We have to not only help one party but also look at how it relates to both parties involved in any future possible transactions. The Bill as it stands seriously disadvantages consumers, and that is a great shame. We have to look at both sides of the argument.

The model in Victoria allows for agreement for the appointment to end some 30 days after the actual agreement has been signed, that is, the auction takes place. Under this legislation, that is not the case. In fact, it simply says that it is 60 days. That will prove inadequate for not only auctions but also private sales. Going through the whole process, a considerable amount of time will have elapsed by the time the seller chooses the agent to undertake the auction, which then has to be promoted, and possible purchasers do their inspections. If the property is passed in at the auction, there have to be negotiations with the highest bidder, and that takes time. The terms of appointment then have to be satisfied if it is not sold and so on. I know that the Labor Party has a philosophical position on this; nevertheless, this will be seen to be unworkable. Unfortunately, one of the losers will be consumers, that is, the purchasers.

The Government has included a section in the Bill relating to unsolicited invitations in relation to marketeers. There is great concern within the community in relation to this and the cooling-off period. Of course, I refer to the real estate industry with regard to the cooling-off period, not motor traders. No-one is arguing about marketeers, and that is fair and appropriate. However, there is concern that this will pick up other irrelevant contracts, that is, other than unsolicited invitations. If one looks at residential property sales, one can see that a person who enters into relevant contracts is given a cooling-off period and the relevant section is the relevant contract.

The cooling-off period for a relevant contract means a period of five business days. The relevant contract means a contract to buy residential property in Queensland that arises out of an unsolicited invitation to attend a property information session. The Bill spells out what an unsolicited invitation is. It states—

"An 'unsolicited invitation' to a person to attend a property information session includes an invitation—

- (a) addressed personally to the person and sent to the person's residential, business, postal or email address; or
 - (b) made by telephoning the person, or other person to approach the person.
- (2) An invitation to a person to attend a property information session is not an unsolicited invitation if it is—
- (a) made at the person's request, other than in response to an approach of a kind mentioned ...; or
 - (b) made to the public generally or a section of the public by media advertisement; or
 - (c) addressed nonspecifically and sent to the person's residential, business, postal or email address.

Examples of invitations addressed non-specifically are those addressed to the owner or householder.

That is reasonably clear, but I understand that the industry is most concerned that this will pick up residential sales. I ask the Minister to clarify that. I read what the Minister said in her second-reading speech, but the industry is very concerned that it will pick up normal residential sales. If it does that through unforeseen circumstances or situations arising, then clearly that is not the intended outcome. I give the Government the benefit of the doubt. I am sure it is not intending for that particular outcome, and the Minister quite clearly indicated the position in her second-reading speech. Everyone appreciates the inclusion of this because of the marketeering problems. Therefore, it is not proposed to pick up other sales apart from those of marketeers, but I ask the Minister to clarify that issue.

The Property Agents and Motor Dealers Tribunal is another issue of concern raised by a number of people in the community. The Government is doing away with the Auctioneers and Agents Commission as it is currently comprised, and I can understand that because the previous Bill did likewise. In relation to the way the new tribunal will be set up, there are a number of issues I want to raise. Firstly, it removes the presumption of innocence. It reinforces the perception that industry practitioners will not be judged by their peers because current licensees are prohibited from being appointed to the tribunal. It denies both consumers and licensees any real right of appeal against tribunal decisions. I note that appeals have to be lodged in the District Court by way of matters of law only and not on any other issues and that appointments to the tribunal are for a seven-year period. The chairman is to be a lawyer of some five years' standing, which is in keeping with the other legislation for magistrates, judges and so on.

However, the legislation specifically excludes current licensed dealers. Situations may arise from time to time where it is not appropriate to have a current licensed dealer on the tribunal. Alternatively, items may come up from time to time which may involve a current licensed dealer, and that is fair enough. There would be a conflict of interest. Generally, that would not be the case. Other States have current licensed dealers on tribunals as they exist in those States. In ensuring that this is not the case, the Minister has gone to great lengths to ensure that dealers have nothing to do with the tribunal in any shape or form. However, situations may arise where the tribunal requires input from practitioners within

the field. As I said, another problem is that the legislation seemingly reverses the onus of proof for those appearing before the tribunal. I do not believe that is appropriate.

The legislation makes allowance for electronic records in some respects but not others. I note that transaction registers may be kept in electronic form, but there is no mention of employment registers. Electronic funds transfers are also not mentioned anywhere within the legislation. It may be that the Government is proposing to cover these matters by regulation.

The ability of industry groups to move funds by electronic methods has always been a big issue. In this day and age, I would have thought that would have been appropriate. Given that transaction registers may be kept in electronic form, there should be some reference to electronic funds transfers. In the absence of such a reference, it seems to me that there would be problems in undertaking transactions in that manner.

In this day and age, it is a very important part of business to be able to move funds around electronically. As I said, the ability to keep employment registers in electronic form is also overlooked. I do not know whether there is a reason for that, but so many records today are kept in electronic format. Given that this legislation is designed to move the industry into the 21st century, these very basic matters need to be considered. There should be reference to these matters in the legislation, unless the Government intends to put through a swag of regulations to cover them. However, if the legislation states that some records can be kept in electronic form, I believe there is no good reason for other records to not also be mentioned.

I think Queensland is now the only State in Australia that continues with regulated commissions. I accept the Government's philosophical basis for that, but I point out that this is the only State in Australia that still has regulated commissions. All other States, including the Labor States, have deregulated their commissions. However, Queensland has not followed that course. The Minister and I have had discussions on this previously. It may benefit some consumers, but I believe at the end of the day it will disadvantage more consumers because there will not be the opportunity to promote these places in a range of ways that I believe would be appropriate. The Government previously considered placing some restrictions on the lower amount of transactions, but I note that that proposition has been abandoned. There is to be no limit; we will retain the current position. That will mean the industry will be very restricted in the manner in which it can promote the properties it wants to put into the marketplace.

The Labor Party has for a long time wanted to get its hands on the Auctioneers and Agents Fidelity Guarantee Fund. No-one could deny that the Minister has successfully done that with this legislation. Currently there is \$40m to \$50m in the fund. From reading the legislation, it is apparent that those moneys will be moved into the Treasury coffers. Well done! I am sure Treasury has been looking forward to that for a long time. The Minister does not have to tell me how happy the Treasury will be with this; I am sure it is delighted. Obviously the Premier and the Treasurer are delighted, because they are getting their hands on this money, too. However, others will not be so delighted.

I am sure that the arrangements for establishing the new Claim Fund will leave a lot of people unhappy. The next development will be that Treasury will attempt through legislation or regulation to restrict the claims made against the fund. Treasury will seek to narrow the opportunities for claims. After all, these claims will now be funded through consolidated revenue. The current level of funding of \$40m to \$50m will no longer exist. I remember it was not so many years ago that there was \$100m in the fund. Because these funds will no longer be set aside—I think the Treasury would use the term "lazy money" to describe them—any claims will now have to be met through what is called a claim fund, which will come out of consolidated revenue. That will put an entirely different slant on the operation of these matters.

The current funds will be transferred to Treasury, and that will enable the Government to balance its Budget, at the expense of industry groups and consumers. It is the consumers who will be disadvantaged by this move. This fund is set up for consumers; it is not set up for the industry. The new Claim Fund will not have sufficient income derived from those who have committed some offence and been fined under the legislation. At the end of the day, I am sure that the new Claim Fund will not be sufficient to meet the payments required, so additional moneys will be required from the Consolidated Fund. If that is the case, as I am sure it will be, Treasury will be required to find the money out of consolidated revenue. It will not be very happy with that, so it will be looking at narrowing the scope for claims.

As I say, it is the consumers who will miss out in this whole exercise. The Government's Budget will be balanced. These moneys are vitally needed to balance the Budget. We know that this Government is the last of the big spenders. It is short \$50m and it will want these funds to prop up its Budget. The Government will recoup that Budget shortfall through this process.

The legislation no longer enables advertising of the names of people applying for various licences. There has been no indication as to why that practice will cease. Such advertising appeared in a newspaper in the relevant locality so that people had an opportunity to object to such applications. Quite often there are justifiable reasons why people might object to a person making application for a

licence under one of these many and varied categories. The Government is doing away with that requirement, and no doubt there is a reason for it, but I do not believe it is a step in the right direction. Given that the Government claims to be so concerned about consumers having a say, this process does not allow consumers or anyone else in the community to object to an applicant who in the past may have done the wrong thing. It may be that someone wants to raise a whole host of other issues regarding a certain applicant of which the registrar or the chief executive officer should be aware when the application is being processed.

I referred earlier to the education and training modules for real estate agents and motor dealers. Right across-the-board a need exists to ensure that adequate standards are set for industry. It would be a pity to see lower standards being applied in this State than has been the case in the past. In a number of industries we seem to have adopted a lower standard because one of the southern States has a low standard and we are forced to follow suit. I hope we will not see too many more examples of that. That is why it is so important to spell out the exact position in terms of education and training for industry groups.

There are a number of other issues I want to touch on. Some of those relate to the issue of motor traders. Historically, there has been a concern about the need to prescribe minimum standards for motor dealerships. That concern relates to backyard dealers and operators. The Government wants to ensure that acceptable standards are set. The need for consistency in local authority requirements has been raised in the past. The way I read this legislation local authorities are being relied on to set those standards under town planning legislation. But backyard dealers in motor vehicles are always a major concern.

Managers' licences are being abolished at a time when there is greater consolidation than ever occurring among motor dealers. With the consolidation of motor dealers we need to be aware that at the end of the day there can be one manager looking after five or more motor dealers. With that consolidation occurring, under this legislation there will simply be one licensed motor dealer but there will be no managers in the individual premises. I do not think that will lead to a better provision of services for consumers. It would be a shame if we got to a situation where someone was operating a dealership out of an accountant's office. That is something that needs to be avoided. One needs to have someone on the spot supervising the business of motor dealing, not someone who is away at another location.

In recent times we have seen Queensland Transport privatising a number of its operations and now it has private providers acting as agents. As Queensland Transport opts out of a number of areas, particularly in the REVS area, a lot of its basic administrative work is now being undertaken by private agents. That means that there are private agents' costs and that they are now passing on those costs. They are additional to the regulatory REVS fees. When dealers have perhaps 40, 50 or 100 trades during a month, those additional fees can add up to a great deal of money. I do not see an allowance made for that made in the legislation; it seems that the motor dealers will have to wear that, even though Transport, as I understand it from my checks, is moving away from these areas, which means that more and more administration costs have to be borne by the dealers themselves. I ask the Minister to investigate this because there seems to me to be no ability for those additional fees to be passed on.

Whilst I am on the subject of motor dealers, I see the return of the provision of a 24-hour cooling-off period, provided people do not take the vehicle out of the dealer's yard. Again, I am not sure that at the end of the day this will be of great benefit. Some consumers will no doubt make some use of it, but I notice that over that 24-hour period the motor dealers can take other options over those vehicles. Of course, if someone wants to take the vehicle out of the yard, they forgo the benefit of that cooling-off period. While that provision may benefit a small number of people, I am not sure that it will benefit the large number of people whom the Minister may have in mind.

Whilst I am on those issues, I see that non-refundable deposits are allowed in certain circumstances. I presume these non-refundable deposits will be prescribed by regulation because no figure has been set. I am not sure exactly what the amount of the deposit will be but it may be that it is \$50 or \$100—not a large amount of money.

Ms Spence: \$50.

Mr BEANLAND: I take the interjection from the Minister that it is \$50. There will be a \$50 non-refundable deposit involved in those matters.

I am familiar with the issue of a statutory warranty. I see that claims under such a warranty are to go to the Small Claims Tribunal. I am just a little concerned about the number of cases that might end up before the Small Claims Tribunal. Arguments can arise on a whole range of issues in relation to statutory warranties and I think that the tribunal could end up being swamped. I trust that the Government is making arrangements to ensure that there is adequate staffing of the Small Claims

Tribunal because sometimes we can get a rush of these things on a small range of issues. At other times not many complaints are made at all, but the statutory warranty is a provision that I think will serve the community well. It is just a matter of ensuring that it functions well before the Small Claims Tribunal because, if there is going to be a hiccup, that is certainly where it will occur. We need to ensure that any complaints can be handled expeditiously by it. I know sometimes consumers can gripe about a range of things, whether they are big or small, and at other times not many complaints are made at all. This will take a while to settle in, I am sure. Perhaps at first there will be a lot of complaints and then after a while they will drop off as people become accustomed to these particular matters.

The issue of brokers is contained in the legislation. Again, I might touch on this more when we deal with the clauses. Concern has been expressed about the legislation having different eligibility requirements for brokers because brokers play a role in the motor trades area.

I have already mentioned backyard dealers. If Governments are concerned about the way in which consumers are treated under the legislation, one could have expected more provisions relating to backyard dealer operations. I do not see remedy by confiscation of assets or anything like that. I think in New South Wales the assets of backyard dealers can be confiscated. One of the States provides for the confiscation of the proceeds of an offence. Backyard motor dealing gives the motor industry a bad name, so the legislation should be addressing that. The Government should be trying to upgrade the role of the motor dealer, not downgrade it. After hearing so much from the Government about its concerns for consumers, I would have thought that perhaps a little more would have happened in that direction.

I have touched on the issue of the tribunal and I will not go through that again. I want to touch on the issue of speedo tampering. Rightly so, the Government has gone to some lengths setting up processes to deal with the tampering of odometers. There is nothing in the Bill about resetting the reading when the mechanical components of an odometer fail and need to be replaced. Because that is particularly important, I ask the Minister to respond to that. Whilst no-one wants to have motor dealers doing the wrong thing with an odometer, nevertheless we do not want people who are doing the right thing being prosecuted unnecessarily. So that is an important aspect of the legislation.

There are a number of other issues that I want to refer to, but I will save those for the Committee stage. This is a very important piece of legislation because it relates to so many people operating small businesses in Queensland. It relates to employers of such people as salespersons and administrative staff in small towns. It is about jobs, and it is about creating opportunities. In some towns, real estate agents, motor dealers and others covered by this legislation provide the town with an economy. It is important legislation as far as jobs are concerned. Therefore, it is important that the legislation works, and works effectively.

I believe the legislation has some problems attached to it. At the same time, legislation appears to be becoming more complex. It seems that we are having more pieces to legislation than ever. I raise this matter because I believe we are fast approaching the situation where we need to see separate Bills for separate industry groups, simply because of the enormous size of Bills.

Legislation is becoming very complex and people are not expert in all areas. Salespeople and others need to refer to legislation. They need to be able to refer to it relatively easily and quickly. Currently they are not able to do that. It takes some time to become accustomed to interpreting legislation. One has to refer to quite a number of sections. Legislation relating to one particular industry group is not covered by a couple of sections. Legislation is growing in size and is becoming more complex and sophisticated. That cannot be denied. I believe the situation has now been reached where Governments must provide separate pieces of legislation for each industry group.
