



Speech by

Mr TIM MULHERIN

MEMBER FOR MACKAY

Hansard 14 November 2000

PROPERTY AGENTS AND MOTOR DEALERS BILL

Mr MULHERIN (Mackay—ALP) (9.47 p.m.): In speaking in support of the Property Agents and Motor Dealers Bill, I will focus on aspects of the Bill pertaining to the Property Agents and Motor Dealers Tribunal, the Claim Fund and a new compensation system. The Bill establishes the Property Agents and Motor Dealers Tribunal to replace the Auctioneers and Agents Committee. It will have jurisdiction to conduct disciplinary proceedings against licensees and registered employees, review minor claims and other administrative decisions of the department and decide claims over \$5,000 against the Claim Fund. The tribunal will have a full-time chairperson and at least six part-time members. The chairperson will be required to be a lawyer of at least five years' standing. The qualifications for part-time members are broadly stated to allow for a range of relevant experience in law, business or community involvement to be represented, including experience in any of the regulated occupations.

In order to maintain the independence and impartiality of the tribunal, a person who is currently licensed or who is an executive officer of a licensed corporation will not be eligible for appointment. The standing of the tribunal and respect for the authority of its decisions in the community generally and for persons subject to its jurisdiction demand the highest standards of independence and impartiality. In contrast to the matters concerning the position of chairperson of the Auctioneers and Agents Committee under the Auctioneers and Agents Act, the role of the chairperson is clearly defined to include responsibility for the standards of practice of the tribunal, the issuing of practice directions applying to proceedings and the professional development and training of members. The fulfilment of these responsibilities will contribute to the professional and ethical standing of the tribunal as a decision-making body of integrity, impartiality and independence.

A hearing of the tribunal will generally be constituted by three members, one of whom will be required to be a person with legal qualifications. However, unlike the Auctioneers and Agents Committee that always required a full complement of eight members plus the registrar to make a decision, the tribunal can be constituted by the chairperson sitting alone for: conducting a preliminary hearing; reviewing a decision of the director-general of the department on a minor claim against the Claim Fund; deciding summary orders; deciding claims against the Claim Fund up to \$10,000; deciding applications for an extension of time to lodge a claim against the Claim Fund; or deciding an application to join parties to a proceeding. This provision will allow for more cost-effective and speedier resolution of the less complex matters before the tribunal in appropriate cases, without compromising the integrity of the decision making or the rights of parties to proceedings.

Proceedings before the tribunal will be conducted with as little formality and technicality as possible, consistent with the requirements of natural justice and the justice of the cases generally. The tribunal will have power to dismiss a claim or an application for review if it is satisfied that it is frivolous, vexatious or oppressive. It will also have power to exclude from a hearing people who are in contempt of the tribunal. A person dissatisfied with a decision of the tribunal will have a right to appeal to the District Court only on a question of law. This provision is consistent with the principles of finality and certainty that apply to decision making by tribunals.

The accountability of the tribunal will be enhanced by provisions requiring orders of the tribunal to be supported by reasons. The tribunal will have power to publish its decisions. The tribunal will also be accountable through the requirement to make an annual report that will be tabled in Parliament by

the Minister. The report will be required to contain a review of its operations for the preceding 12 months and proposals for improving its operations and forecasts of its workload for the succeeding 12 months.

The Auctioneers and Agents Fidelity Guarantee Fund set up under the existing Act is to be replaced by a new fund called simply the Claim Fund. The Auctioneers and Agents Fidelity Guarantee Fund—"the old fund"—was constituted as a special fund made up of contributions paid by licensees, interest paid on trust accounts, amounts recovered from persons found liable for financial losses compensated to consumers from the fund, and interest earned on the fund itself. The Act also made provision for levying licensees should a shortfall in the old fund occur.

In more recent years, because the amount standing to the credit of the old fund far exceeded the amount required to meet all claims in a given year, the Act was amended to allow funds to be made available for housing assistance programs. In 1999, the Act was amended to change the character of the old fund in accordance with new classifications for funds and new accounting requirements under the Financial Administration and Audit Act 1977. The reforms meant that the fund was no longer classified as a special fund, and accounts for the fund were required to be kept as part of the departmental accounts of the Department of Equity and Fair Trading. These changes set the foundation for the development of a new compensation system as set out in the Bill. The Claim Fund is created by clause 408.

Most importantly, the Treasurer will be required to transfer to the fund amounts appropriated from time to time sufficient to meet claims against the fund in any given financial year. Effectively, this means that consumers for whom compensation rights are given under the legislation need not be concerned that the fund will be insufficient to meet their claims. It also means that there is no need for the existing Act's provisions requiring licensees to pay a contribution to the fund when they become licensed, or for special provision to be made to levy licensees to cover any shortfall in the fund. The abolition of what is effectively a power to tax a group by executive fiat should be welcomed by industry bodies.

As under the old Act, consumers who suffer a financial loss because of a contravention of the legislation by a licensee, or a licensee's employee or agent, will have a right to make a claim for compensation from the Claim Fund. However, a consumer who has suffered a financial loss through dealings with a property developer or a property developer's employees will not be entitled to make a claim. Consumers who buy a residential property from a property developer will be warned that they will have no entitlement to make a claim. This will be on the warning statement that will be attached as the first page of the sale contract. The warning statement will urge them to obtain independent legal advice before signing the contract. If the sale is one that has come about through an unsolicited invitation to the buyer, the contract will be subject to a five day cooling-off period.

Claims under an amount of \$5,000—minor claims—will be decided by the Director-General of the Department of Fair Trading or the director-general's delegate. The Bill ensures that the principles of natural justice are complied with in decisions about minor claims by requiring that: the person named in a claim application as the respondent is given notice of the claim; both the claimant and the respondent are given an opportunity to make submissions on the claim; the parties are given a copy of any investigation report made by an inspector about the claim and an opportunity to submit comments on the report; the director-general's decision is made in writing, setting out the findings on the facts of the case and giving reasons for the decision; the director-general notifies the parties of the decision within 14 days of making it; and the notice of the decision includes a copy of the decision and a review notice informing the parties of their rights to apply within 28 days to the Property Agents and Motor Dealers Tribunal for a review of the decision.

Claims over an amount of \$5,000 will be decided by the Property Agents and Motor Dealers Tribunal. To allow for a speedy resolution of claims up to an amount of \$10,000, the chairperson of the tribunal will have a discretion to decide them sitting alone. As with the existing Act, there are time restrictions on claims. A consumer who has suffered financial loss giving rise to a claim must make the claim within one year of becoming aware of the cause of the loss or within three years of the occurrence of the event that caused it. If the consumer has begun an action in a court in connection with the matter, then the consumer must make the claim within three months of the end of the court proceedings. A significant reform will allow a person who fails to meet the time requirements for making a claim to apply to the tribunal for an extension of time. The tribunal will have jurisdiction to grant an extension having regard to all the circumstances and the justice of the case generally.

When a claim is allowed and paid from the fund, the person named in the director-general's decision or the tribunal's order becomes liable to reimburse the fund for the amount paid out to the successful claimant. The decision of the chief executive on a minor claim may be confirmed by the tribunal as a summary order that may be filed in the court as a debt recoverable from a licensee with no further legal action required.

An order of the tribunal on a claim proceeding may be filed in the court as a debt recoverable from a licensee with no further legal action required. These provisions will provide a simpler and speedier process of recovery from respondents than the process under the old Act that requires the Auctioneers and Agents Committee to take action in a court to recover the debt.

In conclusion, I congratulate the Minister on introducing this excellent legislation. No doubt the consumers of Queensland will benefit from it.
