



Speech by

**WARREN PITT**

**MEMBER FOR MULGRAVE**

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Hansard 21 June 2000

**EQUITY AND FAIR TRADING [MISCELLANEOUS PROVISIONS] BILL**

**Mr PITT** (Mulgrave—ALP) (5.18 p.m.): I congratulate the Minister on bringing the Equity and Fair Trading (Miscellaneous Provisions) Bill 2000 into the House. I wish to speak mainly to the time limit discretion for claims on the fund. Clause 18 of the Bill inserts a new provision allowing the Auctioneers and Agents Committee to consider claims against the Fidelity Guarantee Fund that are lodged outside the time limits specified in the Act. This corrects a significant anomaly in the legislation that was brought to my attention by a constituent of mine, Iain Olufson, of Centenary Park.

On 2 August 1996, Iain Olufson completed a motor vehicle purchase with then Broadley Ford Pty Ltd in Cairns. The essence of the deal was that Iain traded a vehicle owned by his parents and took possession of a used vehicle, a Ford XF Fairmont Ghia sedan. Ownership of the vehicle was transferred by Broadley Ford Pty Ltd to Iain, but there was some discussion over whether a roadworthy certificate would be provided. Although the dealer was reluctant at first, Iain insisted and a roadworthy certificate was issued. The nightmare for the Olufsons began some 12 months later, when the Office of Consumer Affairs began to pursue them with respect to interference with the odometer of the vehicle that had been traded and subsequently on sold. It should be pointed out that the company Broadley Ford Pty Ltd was at that time facing allegations of malpractice in respect of its business dealings.

After clarification by Iain and his parents, Ray and Lenette Olufson, no further action was taken. However, in February of this year, Ray and Lenette Olufson, their son, Iain, and his wife, Sara, visited me at my office. They were in a distraught state and relayed their concerns in a letter they handed to me. The letter was signed by Mr Olufson Senior, and it stated—

"Last Saturday, Lenette and I were visiting Iain and his family at Centenary Park, the occasion being our grand daughter's second birthday. The car was parked in front of the house. At approximately 12.30 p.m. two police officers came to the front door, Iain spoke to them and they moved out onto the footpath. After a time Sara went out to see what the problem was and very soon came back totally distressed and said that their car had been reported as a stolen vehicle. It was at this point that I became involved and went out to speak to the officers.

The male police officer ... told me that the vehicle identification number matched that on a piece of paper on his clipboard and that the vehicle had been reported stolen and that he had now seized the vehicle.

Iain asked if he could drive the vehicle to where ever it had to go and was given a firm no by the ... officer who then generously said that he would drive it, this according to the officer was to save Iain the cost of a tow truck. Iain was told he could remove personal items such as the child seats and on asking was allowed to drive the vehicle into the driveway to remove these items. The car was then driven away. All of us were in a total state of shock and disbelief. Iain, Sara and three small children were left with no means of transport. Sara who had recently taken a job in a restaurant working at night in an endeavour to make ends meet could not go to work that night. Iain, a semi trailer driver, was scheduled to leave Cairns for Mackay on 3 p.m. Sunday and as a result could not report to work. Iain and Sara were not in a financial position which allows them to go out and purchase another vehicle."

I took up the matter immediately with the office of the Minister for Fair Trading, Judy Spence. After investigation, the Minister advised that she was limited by the current Act in what she could do to give my constituents some redress.

Let me recap. My constituent had bought a used motor vehicle in 1996 from a licensed motor dealer. The dealer had subsequently gone bankrupt. Earlier this year, the police took possession of the vehicle. It had been stolen prior to its purchase in 1996. The dealer had thus failed in his duty to provide clear title to the vehicle. My constituent naturally felt aggrieved. He felt that, as he had purchased the vehicle from a licensed dealer, he should be able to make a claim on the Fidelity Guarantee Fund. After all, the fund was established to protect consumers in precisely this sort of circumstance.

Unfortunately, as the law stood, the Auctioneers and Agents Committee was unable to consider his claim, because more than the maximum allowable three years had elapsed since the purchase. In earlier, less enlightened times, it would have been possible to make a regulation under section 8 of the Act—the so-called Henry VIII clause. The regulation would have exempted this claim from the time limitation provisions of the Act. However, because such a regulation would offend against the prohibition on Henry VIII provisions, it is no longer possible to go down this track. The current Bill provides discretion for the Auctioneers and Agents Committee to consider claims against the fund of up to \$7,500, this amount being the jurisdictional limit of the Small Claims Tribunal. It is appropriate that a limit be set in respect of the amounts that can be considered beyond time restrictions. Obviously, there must be incentives to lodge claims as soon as possible after a transaction.

The provisions of the Bill we are debating today are welcome. They offer a positive response to my representations on behalf of my constituents. I thank the Minister and her office for the manner in which they have handled this matter. I thank the Minister also for acting to fix up this legislation so promptly. Innocent victims such as my constituent will now be able to be compensated. Special thanks should go also to policy adviser Harold Thornton, who worked closely with my office to bring about a satisfactory resolution to a serious loophole in the previous legislation. I am very pleased to support the Bill.

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