



Speech by

**Mr M. HORAN**

**MEMBER FOR TOOWOOMBA SOUTH**

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**PROPERTY AGENTS AND MOTOR DEALERS AMENDMENT BILL**

**Mr HORAN** (Toowoomba South—NPA) (Leader of the Opposition) (3.01 p.m.): I am pleased to join this debate because the real estate industry is a very important industry in all of our communities. Most importantly, today we are trying to safeguard people who purchase property, particularly those who are not experienced in real estate purchases and those who might be vulnerable because of the stage of life that they are at. Perhaps they have a little superannuation due or are thinking of retiring soon. They have worked hard to accumulate a nest egg and are looking at how to best invest their money to allow for their retirement. Those sorts of people could get hurt.

Often we hear the term 'buyer beware'. That is all very well for people who are experienced in property purchasing or who may have had their fingers burnt in the past and have learned some lessons earlier in life. Today we want to give people who are not highly experienced the opportunity to make worthwhile purchases with good independent, accurate and honest advice. We want those people to have confidence that what they are doing will be of benefit to them into the future. In recent weeks we have read that these scams often involve investment properties where people are seeking to put something aside to help them through their later years. If the investment actually loses money, people who are at a later stage of life will not be able to catch up—nor should they have to catch up.

In the debate today we have to remember the importance of the construction industry, the real estate industry and all industries associated with selling houses and residential properties, such as marketing and advertising. Those businesses must proceed in the normal way without being overly hamstrung by legislation. Nevertheless, they must work within the guidelines to provide accurate and honest services to people.

The Property Agents and Motor Dealers Act was passed late last year and commenced operation in July this year. It introduced a number of initiatives that provided consumer protection from conduct by marketeers. That included mandatory codes of conduct, competency-based licensing, cooling-off provisions, increased disclosures about transactions, services and fees and warning statements. Today we are going further to close any loopholes and to make the disclosures and the warning statement quite clear. I have seen a copy of the proposed warning statement. One would not be able to miss it, and I feel quite strongly about that. The shadow minister and I put out a media release stating that one of our recommendations was that the warning in the contract be quite clear so that whoever is signing it would see it clearly. That is very important.

Many of us do not know a lot about two-tiered marketing. We all know the real estate agents who live in our areas. When we think about selling real estate, we tend to think simply of seeing an ad in the paper, a photo in a real estate window, a leaflet in a letterbox or an ad about an open house. We tend to think of it as being reasonably straightforward. However, once one starts to understand what the two-tiered marketing system involves, one sees the complicated steps, the high pressure process and the bringing in of people whom an inexperienced person would tend to regard highly and respect. For example, an inexperienced person may be told by a lawyer in a tourist area, 'This is great value, I would recommend it.' A financial consultant with some letters after their name may then say that it is excellent.

Then we get those dreadful words 'negative gearing', which everyone thinks is akin to Gold Lotto. People are told, 'If you negatively gear this, it will not cost you a penny. The person renting it will pay it off. In 15 years' time you will have all this money paid for by somebody else.' Sometimes I think

that we should have a warning about negative gearing. There are only a handful of places in the world where negative gearing really works—places such as Monte Carlo, the eastern suburbs of Sydney and exclusive parts of very large cities throughout the world that experience rapid growth.

The proposed warning is good. Every solicitor who takes a client through a contract should make sure that they say, 'Have you read that? Have you made sure of it?' That is one of the major obligations on a person signing a contract, particularly if they are being advised by a solicitor. The legislation affects the two-tiered marketing system and the unfair tactics that have been engaged in by financial advisers, lawyers, financiers—as have been mentioned in the media—valuers, marketing companies, developers and various professional and lay people. The bill is about endeavouring to simplify the process, perhaps through the disclosures that it will make necessary.

My colleague raised the issue of the deficiencies that exist in the current legislation and he mentioned that the real estate industry wants to see those deficiencies addressed. In her summing-up, could the minister mention the timetable that she is looking at for a review of the things in the current legislation that the industry has said need to be fixed? While this bill addresses one issue—keeping it simple and to the point—the other issue needs to be resolved.

The bill requires disclosures at all levels, and I would like to hear what the minister means by that. When a contract is being written, is it the agent's or the seller's responsibility to disclose all the people who have been involved in the process and to declare the percentage or the fee that they are getting?

There will be some cases where it might be generic. For example, if a telemarketing company has been engaged, it might be engaged under a weekly or monthly contract on behalf of an agent or developer to make calls, and so it might be hard to identify the cost component of a particular sale. I would be interested to know more about that. That is one example, but there might be a number of others in terms of how we proscribe and describe what is happening.

This bill also covers residential sales. We are supporting this bill, but we have to be careful that we do not make the profession of real estate agents so complicated and difficult that no-one can do business. I understand that in many cases contracts are subject to a bank finance clause—for example, 14 days to obtain finance. I presume that the five days' cooling-off period is within that 14 days. So if we sign a contract, will it be subject to finance and also a cooling-off period?

**Ms Rose:** There is a quasi cooling-off period. It depends on when the vendor signs it and it goes back.

**Mr HORAN:** There has been some debate, too, as to when the five-day cooling-off period really should start. Under this proposed legislation, that is once it is accepted by the seller. I can see the legal point that a contract is not a contract until two people have signed it. It has been raised with me that the process of getting to that can take some time. We have to accept that. I accept the legal point that that is when it becomes a contract. It had been pointed out that the cooling-off period could have started from when the potential buyer signed the contract. Therefore, we would know that people could have a look around.

There has been some comment that there has not been a great deal of consultation, that the UDIA and the REIQ were not consulted and that there was limited consultation with the Law Society on the cooling-off period. Be that as it may, there has certainly been a need in this case for some expeditious work to get this undertaken.

I have mentioned the cooling-off period. What we are doing today will be of little consequence if it cannot be monitored and acted upon by the inspectorial systems within the minister's department. If the current number of inspectors, as I understand it, of three or four are to be added to by only someone supervising the unit, and if that is not working now, how will it work any better under this particular legislation? We talk about more staff and the words run off the tongue quite easily, but it all costs money.

There is obviously a need—this is an important issue—for additional staff. We are all going through this genuine attempt to support and debate this piece of legislation. The whole thing will be worthless if it does not have the teeth or the staff and the support to make sure that it works and is adhered to.

I would mention also—and I know the minister has an amendment—operations that might be outside of this state. I think the minister intends moving an amendment that might address that. I am not sure how we will prosecute organisations outside our borders. For example, if a telemarketing company based in another state is part of the process happening here, it could be that all of the processes bar the final inspection and signing up of the contract happen across interstate borders. How will the minister's amendment stop them, unless it is aimed at the person who is signing the contract here or the person that the agent in Queensland was dealing with under that contract? That agent might not have any direct association with those people on the other side of the border. That association might be with the person who is selling the house or the units or whatever the development

is. I think that is a point that needs some clarification, because this has been a substantial criticism of this legislation, that is, that it would have its limitations because of cross-border activities.

I have spoken about the fact that this does not relate only to investment properties. I think I have covered the main points that I wanted to touch on today. My shadow minister has already indicated that we are supporting this legislation. I have indicated from the outset that the important issue here is the confidence that people have in the Queensland real estate industry.

Over the years a lot of the growth in our state has come from interstate migration. A large part of that interstate migration has been based upon people coming to the growing areas of the state, be it our coastal areas or other parts of south-east Queensland—areas such as the Hervey Bay areas and other parts of the state that are growing quickly. It is the reputation of our real estate industry and the confidence that people have in it that acts as the magnet for people to consider buying a property or buying an investment and then at some later stage in their life moving to Queensland to enjoy that investment in retirement or when seeking another lifestyle. Importantly, inexperienced people could be led up the garden path in purchasing a property, sadly, to their own financial detriment.

That is about all I have to say on the matter. We will be supporting this bill. I sincerely hope that this will allow people to invest confidently in Queensland. I hope that it will be of good support to the vast bulk of real estate agents, solicitors, valuers and so forth who are involved in this industry. I hope also that in the process of implementation of this legislation the minister and her department can be mindful that the whole thing needs to happen in a timely way. If people have to get valuations, they have only five days to get them. Oftentimes people try to buy a house when they are being transferred and they want to buy it as quickly as they can. Alternatively, a person who is selling a house wants to sell it quickly because they have to go to another town and buy another place. These things need to happen quickly.

If through the warning notice people do obtain valuations and if someone looks at a place on a Friday and they have to have their valuation by Tuesday, we need to be sure that the valuation section is geared up to giving quick and accurate valuations because time will be of the essence for those people; they might lose the opportunity to purchase a property because someone else will buy it after the five-day cooling-off period expires. Those will be the important stages in the whole process.

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