



Speech by

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MEMBER FOR SURFERS PARADISE

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PROPERTY AGENTS AND MOTOR DEALERS AND OTHER ACTS AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (9.15 pm): I rise this evening to speak on the Property Agents and Motor Dealers and Other Acts Amendment Bill—a bill that will amend the Property Agents and Motor Dealers Act 2000, amongst others, to address a number of issues arising from its recent review. I am glad to be able to speak on this bill this evening.

As coalition shadow minister for racing, I look forward to making comment upon this bill with specific regard to an exemption provided for the Magic Millions operations. I know that exemption has already been raised by the shadow minister—and I thank the shadow minister, the member for Currumbin, for her synopsis and analysis of this bill. The Magic Millions carnival is a major racing carnival held at the Gold Coast Turf Club. I notice the member for Southport, an erstwhile committee man from the Gold Coast Turf Club, here in the House this evening. The Magic Millions carnival happens to be in the electorate of Surfers Paradise, which I am proud to represent.

The 2000 act, when it repealed the Auctioneers and Agents Act 1971 in July 2001, was aimed at championing and strengthening consumer protection. It was to achieve this through modernising licensing practices in the industry and regulating real estate agents, restricted letting agents—now 'resident letting agents'—pastoral houses, property developers, motor dealers, auctioneers and commercial agents. A report reviewing the act was tabled in 2004, suggesting the act had worked well over the three years in providing consumer protection across a range of industries as well as promoting best practice in those industries. The report did, however, detail a number of additional consumer protection measures, a number of industry performance enhancement initiatives and a significant number of technical amendments to assist the act in achieving its purpose.

In offering their support to this bill, members on this side of the House want to ensure that the amendments which are long overdue go far enough to protect the consumer and thereby enhance the name of good agents who are operating in the respective industries.

It is common knowledge that in the electorate of Surfers Paradise there is a high concentration of unit complexes. After dialogue with some of the property agents in the electorate, I understand it is a common occurrence that restricted letting agents 'lock out' or attempt to 'lock out' other agents from complexes that they manage. This means often the managers are the only agent to sell in the complex that they are managing. They then limit their marketing only to investors, ensuring that the property remains or becomes a rental property in their letting pool, ensuring further income for themselves. This has the potential to disadvantage the seller as the property is not opened up to the broader market—that is, to residents and investors alike—and that can only be detrimental to the seller's interest. Any change to the legislation should be aimed at protecting the seller in this instance. Clause 17 and some others in this bill scratch the surface of this issue, but further regulation may need more specificity.

I would also like to draw attention to a possible need to make it mandatory for auctioneers to verify the identity of and to register all bidders at an auction and to identify vendors bids to other bidders at the

time the bid is made. As I recall, this initiative was suggested by the shadow minister, the member for Currumbin, in a private member's bill which was voted down by this government.

Mr Caltabiano: It was rejected.

Mr LANGBROEK: It was rejected by this government. As I have noted previously, we have brought in 67 private members' bills and the government has rejected all but one.

I was contacted with regard to this matter at the end of 2004 by the principal at Coldwell Banker Property Australia. I was informed that the agency—one that operates in both New South Wales and Queensland—has had no problem with the registration and identification of bidders at auction since the changes had occurred in New South Wales relating to auctions. The agency informed me that it now encourages all bidders to register and issues bidding paddles at all auctions.

I note that the bill at clause 84 does do well in addressing issues of overquoting or underquoting on selling prices of property prices by real estate agents and, indeed, addressing this issue specifically for vehicle auctions, but I would like to take this opportunity to flag another problem being experienced in practice within the real estate industry. The REIQ in a release to members also highlighted that there were changes to the documentation. Currently, there is some confusion relating to the various prescribed forms that are in use and how these are to be used, especially relating to the fax transmission of contracts.

It is important that this is clarified by the minister, be it in this bill or similar legislation. I seem to recall that the faxing of contracts has been authorised following a case involving a constituent of mine in which the purchaser sought to get out of the purchase due to a fax page not being sent in the right order. I remember that we dealt with this legislation last year. I know that the member for Southport made representations to the minister, as I did on behalf of my constituents. I think that this may have been clarified, and I would certainly welcome that on behalf of buyers and sellers and the certainty that it would offer. I seem to recall the judge in that case even went to the extent of looking up the dictionary definition of the word 'attached', simply because of this attachment issue—whether a fax meant that it was not attached unless someone made the effort to actually attach the front page. So, without clarification, consumers—both sellers and buyers—are potentially exposed with contracts that may not be binding even though they are prepared with the utmost care. It was poorly drafted legislation that has caused this confusion and the industry needs clarification.

Other noteworthy improvements that this bill provides are initiatives in line with the 2004 report relating to motor dealers operating from approved premises, penalties for unlicensed motor dealing and ensuring motor dealers do not avoid their statutory obligations by pretending to be private sellers. Again, I know this is an issue where people by the side of the road sometimes sell more than a couple of cars over a certain period of time, still pretending to be private sellers when obviously they are selling a number of vehicles.

Introducing penalties for this and excessive or improper commission offences, as well as a requirement that such commissions are returned to the client, is a step in the right direction. This bill is commendable in its honourable pursuit of consumer protection. Entering perceived cutthroat industries relating to big-ticket items such as vehicles and property can be daunting for consumers, especially first-time buyers.

The biggest question in this bill for me is something that I have raised before, and that is one of its exemptions. I flagged this concern earlier as it relates to Magic Millions. Clause 4 of the bill inserts an exemption from the licensing and conduct requirements imposed on people performing auctioneering duties, currently contained in chapter 7 of the act, in two specific situations: (1) where an auctioneer receives no reward for conducting an auction for a charity, religious denomination or other like organisation formed for a community purpose—I think no-one would have any argument with that; and (2) where the auctioneer has been invited to participate in the annual Magic Millions thoroughbred racing horse sales.

The explanatory notes explain that this exemption will apply only where the sale is conducted for Magic Millions Sales Pty Ltd and the person conducting the sale is approved by the chief executive before the sale as a suitable and appropriate person to conduct the sale. There is no disputing the fact that Magic Millions has become so popular it now attracts international attention and is a significant racing and tourism industry event. I have continually supported the precinct and the event in this House, but this exemption does not sit well. Unlike the first exemption, justifiable because charity auctions, often involving a celebrity auctioneer as a drawcard, are a fundraising strategy used by many not-for-profit and community groups, Magic Millions Sales Pty Ltd is a private company and no private company should be afforded an advantage over others through legislation. It is not the role of parliament to protect one private enterprise over another. I am yet to hear of a case made to qualify this exemption and I hope that a justification is offered by the government.

This exemption also seems a little different from the Australian Labor Party's former attitude to similar legislation. In the 1970s the Australian Labor Party campaigned against specific purpose legislation to support the Iwasaki Capricorn Resort and the development of the Paradise Centre in Surfers Paradise. Such special legislation to benefit individual entrepreneurs was criticised as being fundamentally corrupt,

with the ALP arguing that legislation should be general in nature, not to suit the economic benefits of any one developer.

The clause 4 exemption seems to demonstrate a sharp turn in thinking, and I would like to ask the minister what deal, if any, has been struck in order to have this exemption included. This bill should be general in nature to permit any horse auctioneer to apply for an exemption from licensing in appropriate circumstances. It should also lay down specific criteria to enable any such application from exemption to be objectively assessed and justified. In the absence of these provisions, the suspicion will always remain that this is a shoddy mate's deal which this government has entered into. The Property Agents and Motor Dealers and Other Acts Amendment Bill has my support insofar as its aims to protect consumers and thereby legitimate dealers within the industry itself.