Speech by

Jarrod Bleijie

MEMBER FOR KAWANA

Hansard Tuesday, 17 August 2010

PROPERTY AGENTS AND MOTOR DEALERS AND OTHER LEGISLATION AMENDMENT BILL

Mr BLEIJIE (Kawana—LNP) (4.56 pm): I rise to speak to the Property Agents and Motor Dealers and Other Legislation Amendment Bill 2010, which is before the House today. At the outset let me reiterate the point made by the shadow minister that we will certainly be allowing this bill to pass through this chamber today.

Mr Lawlor: Oh, thank you. That's very decent of you.

Mr BLEIJIE: Yes, we will. When the shadow minister made the comment, there were certainly interjections from those opposite, particularly from the member for Morayfield. For the benefit of the member for Morayfield, I remind the honourable gentleman that those on this side of the House, and I personally, will always support government legislation that shows that once upon a time they were incompetent when they particularly brought in relevant legislation but they have the guts to come back before us in 2010 and fix up their mistakes. That is what this is all about.

I am reminded of the second reading speech by the honourable minister at the time I think back in 2005. The minister at the time, particularly in relation to the warning statement, said—

The amendments to the Property Agents and Motor Dealers Act relate to real estate transactions. They will provide certainty for sellers of residential properties or their agents when transmitting precontractual documents by facsimile and other electronic means.

That was some five years ago, and those amendments at the time have certainly not provided anything. All they provided was uncertainty in the profession. They provided uncertainty in the legal profession. They provided uncertainty in the property profession. They provided uncertainty for real estate agents. Now, some five years later, the government is again introducing legislation to fix up its mess from so many years ago. If it had talked to the industry at the time of those first amendments, it would have understood that we have arrived at a point today that we should have arrived at many years ago.

This bill will amend chapter 11 of the Property Agents and Motor Dealers Act 2000, commonly referred to as PAMDA, and will make corresponding amendments to the Body Corporate and Community Management Act, BCCMA. The proposed amendments in this bill remove the current requirement that directions be given to a buyer after signing the contract but before they are bound under the contract. The removal of this ambiguous double direction will, I am sure, reduce noncompliance issues.

The amendments also remove the requirement for the warning statement and any information statement with respect to unit sales to be attached to the contract as the first and top page of the contract. The warning statement and information statement must merely be attached to the contract. I say to the honourable minister that under the current legislation contracts had to have the warning statement, which is the statutory form 30C. The current legislation required the 30C to be attached as the first and top sheet of the contract. These amendments to the legislation basically get rid of that requirement. I would appreciate it if the minister in his response this afternoon could explain the reasoning behind changing the requirement to have it as the top sheet to now have it attached anywhere through the documentation.

The bill introduces a 90-day period for a buyer to exercise their right to termination because the warning statement requirements have not been complied with. The bill will simplify the processes for the creation of residential property contracts and will create certainty for all parties involved in the sale of residential properties.

As the shadow minister for tourism and fair trading has stated today, the Liberal National Party believes that this bill is a practical step towards tightening the legal loopholes that have arisen under the existing legislation. I am glad that the government has realised this. It is about time it tried to reduce the red tape and burden for consumers and industry and enacted this legislation to bring about more efficient, effective and productive processes.

The bill is a response to the review of the regulatory reform, phase 2, of the Property Agents and Motor Dealers Act 2000 to identify the major regulatory features of the Property Agents and Motor Dealers Act 2000 and to recommend legislative amendments to simplify the level of regulation while maintaining effective consumer benefit. The details of the review are set out in the Service Delivery and Performance Commission's March 2008 report.

The amendments provide significant changes to property and conveyancing practices and are welcomed by the legal community, developers, financiers and the real estate industry. The introduction of the 90-day period for buyers to exercise their right to terminate the contract for noncompliance with the warning statement requirements will provide some certainty and peace of mind to sellers and developers with longer periods of contract, particularly off-the-plan contracts.

It is important to note that, even though the contract process has been simplified through these amendments, the amendments do not remove the key consumer protections, including the cooling-off period and the requirement to at least attach the warning statement and information sheets for unit sales. The existing requirements under PAMDA and BCCMA set out a very stringent process and order for the warning statements and information sheets to be attached to the contracts for the sale of residential property. If the order is not strictly adhered to or certain documents not acknowledged then a buyer has the right to terminate the contract at any time prior to settlement.

In practice, what we have at the moment is a situation where a buyer signs a contract as an offer to the seller. It is then sent to the seller. Prior to the buyer signing the contract, the seller, giving the blank contract to the buyer, must direct the buyer to the 30C warning statement. The buyer then signs the contract as the offer. It goes back to the seller. The seller then signs it if they accept the offer. When the seller or the seller's agent sends the fully executed signed contract back to the buyer, they must again direct the buyer to the warning statement. It was a double-dip direction which has created all the controversy and legal cases and loopholes in the current legislation. It was a mess when it was first introduced. One of the most litigated issues in the courts in terms of conveyancing was over this particular section: is it attached, is it not attached; is it a facsimile or an email? The whole system was a mess.

The strict regime and red tape process resulted in noncompliance issues in the sale of several properties allowing buyers to terminate contracts at any time prior to settlement. This was due to the loopholes. This created uncertainty for sellers and the industry. When I was practising property law we had a contract for the purchase of a block of land. It was an off-the-plan block of land. The buyer signed the contract some 12 months past and the block of land still had not received title. It was due to settle in three months time. The global financial crisis hit. The buyer looked at their investments and opportunities and decided they did not really want to purchase the property.

They came to me as their legal adviser and asked whether there was any way they could get out of the contract. On the face of it the answer was no because there were no conditions left for them to get out of the contract, having satisfied finance and all the other conditions. A review of the file, bearing in mind this was 12 months after it was signed, found that the seller's lawyers, when sending me the contract, did not direct my attention to the warning statement.

The way the loophole works is this. We lawyers get the contracts and we direct our client's attention to the warning statement. When one acts for the buyer, it is the seller's responsibility—the seller's agent including their lawyers—to direct the attention of the buyer to this. This was not the case so we were able, after a period of 12 months, to terminate the contract. I think the 90-day provision is a good thing because it gives certainty. People know what is happening in 90 days time. We will not have buyers like my client at the time.

Lawyers act for sellers and buyers. We do what we are told and we do what we get paid for. I would not actually call it a loophole; it was more the fact that the seller's lawyers were required to do it under the legislation. But because the legislation was such a mess and confused so many people, some in the profession took advantage of that—as I did on that particular day and saved my client a lot of money. It is a couple of years later and we are here to fix the problems.

In order to comply with the existing stringent requirements, the legal and real estate industry have had to increase the paperwork and red tape. This has of course resulted in increased costs to the

consumer. The removal of these exhaustive requirements will result in a simplified and tighter process for entering into contracts for the sale of residential property and will provide peace of mind to the sellers and the industry professionals.

Under the new system, the statement directing the buyer's attention to the warning statement, which presently is the form 30C, is still a requirement but the amendments basically get rid of the issue around when the buyer becomes bound under the contract. The confusion was around when one became bound under the contract. It was about whether they got the fax, when it was faxed, who sent it and so forth. Now the seller will provide a direction to the buyer.

I still think we treat consumers with contempt in terms of their intelligence. I am pretty sure that when a buyer picks up a contract, if the first and top sheet is the warning sheet and it is in a font size of 80 and says 'Warning: read this before signing a contract' they know what to do. I believe that consumers have sufficient intelligence that they know what 'Warning: please read and understand this and sign prior to entering into a contract' really means. I think Queensland consumers are intelligent enough to work that out without having to be told to look at the warning statement. Essentially it has become a warning of a warning.

I must say that, in a time when consumers are relying on electronic forms of negotiation more and more, the amendments streamlining the process for issuing contracts by email and facsimile are long overdue. In the 10 years since the introduction of PAMDA, the Labor government has introduced over 30 pieces of legislation to amend PAMDA. In 2005 we saw the Labor government introduce amendments to set in place those stringent requirements that I speak about with respect to the order of the warning statement and information sheets. Late last year we saw the Bligh Labor government introduce and support the Building and Other Legislation Amendment Bill which, of course, as we recall, introduced the mandatory sustainability declaration.

I recall that at the time we were talking about property law I distinctly told the minister that this was going to be a complete mess and they would end up amending the form. Of course they deny, deny, deny. What do we know now? It has been amended some three or four times since. Again, if those opposite had spoken to the industry and listened to the opposition they would understand that. Despite the objection from the industry and the Liberal National Party with respect to the detailed and onerous form, the Labor government went ahead and forced this checklist on sellers. However, only one month and four days after the commencement of that sustainability declaration, which of course is tied in with property sales, the government released the newer, simpler version of the form. There were two further versions in as many months.

The question Queenslanders must ask themselves is: how many times does it take for a Labor government to get it right? The Bligh Labor government needs to consider the impact that its actions have on the residents and industry of Queensland before it introduces more and more red tape and regulation such as that declaration. Each and every knee-jerk reaction of the Labor government results in increased expense to the cost of living for Queenslanders. Every time the government needs to fix up its incompetent messes or simplify its own red tape, Queensland taxpayers are left to foot the bill.

Page 15 of the bill that we are debating today contains a cooling-off provision. Under the current legislation the cooling-off period starts the day after someone becomes bound by the contract. That is how it is worked out when someone becomes bound by the contract. Under the new bill, the cooling-off period starts the day after the buyer receives a copy of the executed contract from the seller. I have two questions to the minister that I would like him to research before he gives his summation at the end of this debate. Where a buyer receives a copy of the contract, the bill says that that is when the cooling-off period starts. However, if a buyer is really determined to get out of a contract, they may in practice allege that they never received the contract in the first place. Once a seller sends the contract back to the buyer, the seller does not know that the buyer has received it and when the cooling-off period in fact starts. The buyer may receive it but then wait another two weeks. The seller may call them and ask if they have received it and the buyer might say, 'No, we haven't received it,' and then terminate and deny that they ever received the contract, because the seller does not know where it has gone. They assume that it has gone to the buyer if they have in fact got the address right. Subclause (2) of proposed section 369 states—

... if the buyer signs the relevant contract after the seller signed it, the buyer is taken to have received a copy of the relevant contract ... when the buyer has both signed the relevant contract and communicated the buyer's acceptance of the seller's offer ...

If the buyer has signed all of the documentation and then communicated it back to the seller, the second issue is that the communication of the acceptance to the seller is not really detailed in the bill. Is a phone call acceptable if the buyer rings up the estate agent? Practising lawyers would know the rules of offer and acceptance, but that may not be so clear for a lay person such as a real estate agent. If this explanation is not provided in a similar way that it is now, people will be debating when someone is actually bound by the contract under the cooling-off period and then people may terminate and it may end up in litigation. I would appreciate it if the minister could respond in his summation at the end of the second reading debate or during the consideration in detail stage as to how that will take place.

In conclusion, I would appreciate the minister's reply to a few things: firstly, the cooling-off period; secondly, the warning statement as now not being required to be the top sheet but attached anywhere throughout the contract; and, thirdly, the new termination provisions and the 90 days. The termination provisions are now contained for the buyer in certain circumstances. The current situation is that the seller gives the direction of the warning statement; the new situation is that the seller gives the direction directing the buyer to the warning statement. However, the buyer will not have the right to terminate if they have signed the warning statement. So there are two issues here. If I am a seller I still have to direct the buyer to the fact that there is the warning statement and so I provide that direction. If I do not, I get fined and 200 penalty units apply. However, if I am a buyer and I sign the warning statement, wherever it is contained in the contract, then I do not have the right to terminate but the direction may not have been given to me. I want to understand the importance of having the direction at all if the buyer has to sign the warning statement and they cannot terminate in any event. I would appreciate the minister's response in his closing remarks.