Speech By
Hon. Annastacia Palaszczuk

MEMBER FOR INALA

Record of Proceedings, 6 May 2014

AGENTS FINANCIAL ADMINISTRATION BILL; DEBT COLLECTORS (FIELD AGENTS AND COLLECTION AGENTS) BILL; MOTOR DEALERS AND CHATTEL AUCTIONEERS BILL; PROPERTY OCCUPATIONS BILL

Hon. A PALASZCZUK (Inala—ALP) (Leader of the Opposition) (4.02 pm): I rise to make a contribution to the cognate debate of the Property Occupations Bill 2013, the Motor Dealers and Chattel Auctioneers Bill 2013, the Debt Collectors (Field Agents and Collection Agents) Bill 2013 and Agents Financial Administration Bill 2013. I wish to advise from the outset that the opposition will not be opposing these bills. However, there are aspects of some bills that we do not agree with, and I will be addressing those in my speech. My intention is to address the specifics of each bill in turn, detailing our views and concerns on the various elements contained within. Before doing that, I will provide some background as to how we arrived at the bills that are now before the House.

The reform process relating to these four bills dates back to March 2008 when the former Service Delivery and Performance Commission, the SDPC, proposed to repeal the Property Agents and Motor Dealers Act 2000 and introduce a new legislative regime. It had been widely accepted that the act known as PAMDA had become cumbersome and burdensome through extensive amendment. The main purpose of the SDPC review was to reduce the regulatory burden on business without lessening the consumer protection provided in the act. The major recommendation of the review was to split the PAMDA into occupation specific laws and to transfer the trust account provisions to separate legislation. From this recommendation a working group comprising representatives of key industry associations was formed in the 2009-10 period and broad public consultation was also conducted as a suite of bills to replace PAMDA was drafted and ultimately introduced into this chamber.

In 2011 the draft bills were referred to the former legal affairs, police, corrective services and emergency services committee, which called for public submissions and held two public hearings in its examination of the bills. Then last year the LNP government, through its red-tape reduction review, conducted a six-week public consultation process including releasing the 2010 draft bills on the Office of Fair Trading website and targeted consultation on exposure drafts of the amendment bills. I make these points because it was the former Labor government which did the hard yards in developing the four bills to replace PAMDA.

I note in his introductory speech the Attorney-General pointed out that this bill reduced red tape. He then went on to say that it was part of the government's ongoing program of unburdening industries and streamlining bureaucracy. But at no point did he acknowledge that virtually all the lead-up work to develop this bill was done by the former Labor government. Further, Labor had reached general consensus with the industry on changes to be made and the only parts that upset the industry were those that were added by the Attorney-General. Honourable members can see the main elements of these bills have been subjected to detailed and meaningful consultation—something that the government does not always do. As the government should realise from the process for this bill,

when they listen to stakeholders, they can achieve an outcome that engenders the support of both sides of politics.

I would like to now address some of the specifics contained in the Property Occupations Bill 2013. Unfortunately, the Newman government's approach to governance seems to place a greater emphasis on red-tape reduction than it does on maintaining the consumer protections that are such a vital and important part of property laws in Queensland. The opposition's main concerns with this bill all relate to an unnecessary reduction in our view of consumer protection measures. That is our main issue. No longer requiring letting agents to reside on site or maintain an office on site—the PAMDA sets out the eligibility criteria for holders of a resident letting agent's licence. Those criteria include a requirement that the resident letting agent reside on site or, if they have a licence in respect of more than one building, in one of the buildings. A similar provision exists in relation to an office. These requirements were included in the 2010 bill as well. However, this requirement has been removed in the bill currently before the House. The explanatory notes are quite misleading in relation to this matter. They state—

This will benefit industry by substantially reducing red tape and the current limitations on operating more than one complex.

There are no restrictions on operating more than one complex. The current act is very clear. I am referring to section 35, 'Eligibility for resident letting agent's licence', which states—

(1) An individual is eligible to obtain a resident letting agent's licence for a building complex only if the individual—

...

(c) satisfies the chief executive that the individual—

(i) resides, or will reside if issued with a licence, in the building complex or, if the individual proposes to perform the activities of a resident letting agent for more than 1 building complex, in 1 of the building complexes ...

There is then an identical provision relating to a registered office.

At the public briefing on the bill the member for Burleigh raised what he described as grave concerns about this, citing the possibility that the standard of accommodation and building maintenance would not be upheld. In a submission to the committee, the Unit Owners Association of Queensland was critical of this provision of the bill, stating it had—

... serious reservations as to the service levels of tourists if the letting agent is not accommodated on site. Moreover, the enforcement of by-laws and proper conduct of visitors and residents, currently the responsibility of letting agents, has not been addressed in the bill.

The opposition does not support the removal of this requirement from the bill. The perceived problem it was seeking to solve does not exist. For the peace of mind of resident owners of these complexes and for the peace of mind of the owners who let out their units, an onsite manager is a greater protection for their investment.

This bill also provides for a five-day cooling-off period within which a purchaser may change their mind about purchasing a property. There is a penalty that applies and part of that deposit is forfeited, but the contract can be terminated. A similar cooling-off period already exists in PAMDA and was also contained in the previous 2010 bill. A purchaser is also able to waive or shorten that cooling-off period, and that is in the act and both of the bills as well. However, the significant difference is that, before a purchaser could waive or shorten a cooling-off period, they had to furnish a lawyer's certificate. That certificate had to fulfil certain criteria set out in the act, which states—

The lawyer's certificate must be signed and dated by the lawyer giving the certificate and confirm the following by stating—

(a) the lawyer is independent of the seller, the seller's agents and anyone else involved in the sale ... of the property and has no business, family or other relationship with any of those persons;

(b) the lawyer has not received, is not receiving, and does not expect to receive a benefit in relation to the sale ... of the property, other than professional costs and disbursements payable by the buyer;

(c) the lawyer has explained to the buyer—

(i) the effect of the relevant contract; and

(ii) the purpose and nature of the certificate; and

(iii) the legal effect of the buyer giving the certificate to the seller.

The effect of not providing the lawyer's certificate is that the contract can be terminated by the buyer at any time before settlement. However, the need for the certificate and for a buyer to have independent legal advice is removed. All that is required to waive or shorten the cooling-off period is written notice to the seller. The explanatory notes provide no adequate explanation for the removal of this requirement. Again the explanatory notes are quite misleading. They state that the reason the provision was included in the current PAMDA is—

The provisions are intended to deter marketeers that may use pressure selling tactics and encourage buyers to obtain advice from a lawyer who will in turn receive a benefit from the marketeer ...

They then go on to say—

However, it is considered that these provisions are unnecessary as the *Legal Profession Act 2007* also provides a framework for ensuring the appropriate conduct of legal professionals, including the standards for acting independently.

However, it is not the independence of lawyers that these provisions seek to maintain. These are provisions in the Legal Profession Act 2007 that certainly do provide protection for buyers who seek the advice of lawyers, but this bill removes the need to even seek the advice of a lawyer before signing the waiver document. How can the Legal Profession Act apply when a buyer is not required to see a lawyer? The explanatory notes are quite disingenuous in this respect.

Another reason given is that there would be an additional cost to a buyer in seeking legal advice, and it may be possible for a purchaser to negotiate a lower price by waiving the cooling-off period. The Queensland Law Society expressed concern about this change in its submission to the committee on the following basis—

... it would be too very easy for an unscrupulous or rogue seller/agent to obtain a signed notice of waiver from a buyer who did not realise the implications of what they were signing. This risk is particularly heightened for buyers who are unfamiliar with the process of residential contract formation in Queensland.

Members of the Society report that buyers rarely obtain legal advice prior to committing to a contract for the purchase of residential property and are often unfamiliar with the terms of the contract they have signed.

Accordingly the protection of the independent lawyers certificate should be retained.

This is a very real concern. Ensuring that people have proper advice before they waive such an important right is paramount. For the cost of seeking legal advice, protection for a financial obligation that will more than likely be the most significant in the person's life is justified. With no adequate reason being provided for the removal of this requirement, the opposition cannot support the removal of such a significant measure for consumer protection.

One of the more contentious aspects of the current PAMDA is the substantial provision relating to the provision of warning statements in contracts. Currently for residential property there must be a warning statement attached to the contract. As PAMDA provides in section 368A—

(2) When the seller gives the proposed relevant contract to the proposed buyer the seller must—

(a) have a warning statement attached to the proposed relevant contract; and

(b) if the proposed relevant contract relates to a unit sale, have an information sheet attached to the proposed relevant contract; and

(c) give the proposed buyer a clear statement directing the proposed buyer's attention to—

(i) the warning statement and proposed relevant contract ...

Failure to do so gives a right to terminate the contract with no limit on when this can be terminated up until settlement. This procedure was simplified somewhat in the 2010 bill and became less prescriptive. It still required the giving of a warning statement attached to the contract and required there to be a statement drawing attention to the warning statement. Failure to comply still resulted in a right to terminate the contract. However, the substantive issues that led to an amount of litigation were addressed.

This bill replaces the requirements for a separate warning statement with a simple requirement for a prescribed statement to be included in particular home sale contracts. The seller must ensure the contract includes information on the cooling-off period and advises the buyer to seek independent legal advice. This must be written in the contract once immediately above and on the same page as the place in the contract where the buyer signs. Failure to comply with these new provisions can result in a maximum penalty of 200 penalty units and the buyer will no longer have the right to terminate.

These changes were welcomed by many stakeholders. However, the Queensland Law Society suggested that the right to terminate should be retained. The Queensland Law Society Property Development and Law Committee 'does not agree with the removal of the existing termination right for a buyer where a seller fails to comply'. The Queensland Law Society said in its submission—

As s167 currently stands, a deceived buyer has no remedy and is bound by the contract. The omission of the particular matters is a regulatory offence, which may or may not be prosecuted by the relevant regulatory authority depending on the evidence available to them. This is little comfort to a deceived buyer.

For these reasons the Committee was of the view that in order to ensure that the consumer protection elements of the Bill are still effective, while also reducing red tape and better facilitating residential property sales, a time-limited termination right to the buyer should apply if the particular matters are not included within the contract. The Committee was of the view that the current

90 day time limitation of termination rights may be appropriate so as not to frustrate long-term agreements where a buyer has not sought advice or has not taken any action on the sale contract within a three month period.

The opposition supports the position of the Queensland Law Society. There is a clear need to simplify the process, providing the necessary warnings and advice as to the existence of, for example, the cooling-off period. However, this has to be weighed against an appropriate deterrence for breaching that requirement. An offence provision provides no recourse to a buyer who has been defrauded. By restricting the right to 90 days, this provides protection to sellers and certainly to the market.

The opposition has some concerns about aspects of the Property Occupations Bill relating to commissions. Due to the cognate debate and the limitations on time, I will only mention them briefly in my speech. These concerns will be expanded upon by my colleagues. In particular we have concerns about: the deregulation of the real estate commission cap; changes that will allow agents to receive commissions when they have a beneficial interest in a property; and the government's intention to remove the obligation of an agent to disclose to a buyer the commission that will be received from the seller. The opposition will also further discuss the exemption for sophisticated parties and the assignment of appointments. In particular, we are concerned that these changes will result in an erosion of protections for consumers.

I now want to address the ban on price guides. The opposition has listened to stakeholders on this matter. The arguments that have been put forward by those who oppose the ban appear to us to have some credit. After a significant amount of criticism from the industry, the Attorney-General announced that he proposed to make some changes that will allow advertising of price ranges on the internet, but he did not agree to back down entirely from the ban on auction price guides. The Attorney has circulated amendments that he proposes to move during consideration in detail that give effect to this proposal. However, there are still criticisms from the industry. This only allays some concerns about the proposal. The bill still poses a significant problem for agents trying to market properties on behalf of clients. It would make things easier if we could understand some more details in relation to this change.

Currently PAMDA provides that an auctioneer must not help a seller decide the reserve price for an offered property unless, before the seller decides the price, the auctioneer does a number of things, including giving the seller a comparative market analysis or an explanation of why this is not possible. A similar provision was contained in the 2010 bill and in the bill currently before the House. The act then goes on to prevent an auctioneer from disclosing to a bidder whether there is a reserve price, and if so what that is, or an amount the auctioneer considers is the price likely to result in a successful or acceptable bid for the offered property. Again the 2010 bill contains a similar provision, as does this bill. However, an auctioneer can disclose the fact that there is a reserve price. The current bill goes a step further. In the case of a sale by auction, it also prevents the auctioneer from disclosing to a potential bidder a price guide for the property.

The passion for and against this proposal within the real estate industry is equally poised: those who support it do so with vigour; and those who oppose it do so with a considerable degree of opposition. As the opposition in this parliament, we have listened to stakeholders on this matter. The arguments espoused by those who oppose the ban appear to us to have some credit. Unfortunately, the explanatory notes provide no clear guidance on the explanation for this change. Apparently, the operation of the legislation will miraculously be improved by clarifying that price guides at auctions are banned. There is no evidence put forward that the legislation needs improving in this respect. No evidence is produced that the industry or stakeholders have been clamouring for such change.

The explanatory notes then go on to tell us that price guides at auction are banned. The bill at clause 214 and clause 216 clarifies that a price guide for a property to be sold by auction is not to be disclosed, whether in advertising, when asked by a potential bidder or otherwise. The introductory speech is of absolutely no assistance either. It merely states that the bill clarifies that the disclosure of a price guide for a property that is going to auction is banned. We really do need some more details about the rationale for this in the legislation. One of the most passionate persons on this issue has been Mr John McGrath. Mr McGrath gave evidence to the public hearing on the bill and I want to quote his testimony. He said—

I would like to take a few minutes, if I could. I am the founder and CEO of a company called McGrath Estate Agents. We operate 55 offices on the east coast of Australia, with 10 in Queensland. We have been in operation for about 25 years. Last year, our company sold about 8,000 properties. I give that information just by way of a background. We are very delighted to be relative newcomers to the Queensland market over the last few years.

I have been in the industry for 32 years and, God willing, I hope to be here for another 32 years, so I am a very passionate student of real estate and a lifelong, committed real estate agent. I am not a passer-by in the industry. Therefore, when

something like this particular proposed banning of price guides comes along, it is of great concern to me. I think this should be of great concern to everyone because it affects literally hundreds of thousands of people in this state ...

I must say, with respect to those who have sponsored this particular piece of legislation—and I suspect they may not know all of the details so I will try to fill in a bit of that—that I fear this has the ability to take this industry, and indeed this real estate market, back decades to where buyers were not provided information and agents held the power because they did not have access to information. Fortunately, through great tools such as the internet, life has changed and people can now after-hours and in the limited time they have available search for properties, find information and find data about what has sold and what is for sale. I think that is a great new place for us to be in, yet I think this proposal to actually remove the ability to advertise price guides is going to take us back a long, long way.

He goes on—

In effect, this proposal means, if my understanding is right, that an agent will be prevented from having any form of real-time, genuine, robust discussion with a buyer at any place verbally around the price of a property they are representing, which is fascinating because the No. 1 thing that most buyers are interested in is what it is worth. We know that buyers have flexibility in where they can live, whether they live in a house or a unit, but we know that they unfortunately have no flexibility in terms of their price. They have a fixed price, they have a certain limit they can go to. So price is by far and away the No. 1 most relevant criteria for a buyer, yet we are seeking to remove that when promoting a property by auction, which is a very popular and rapidly growing method of selling real estate in this state and around Australia.

I am very concerned when I hear evidence like this from one of the most experienced real estate agents in the country. He said in his written submission to the committee—

If the legislative proposal is adopted Queensland is the only jurisdiction on the planet that prohibits vendors advertising the price expectation would be for their property.

There have been numerous newspaper articles about this proposal since it was introduced. The article in Saturday's *Courier-Mail* was interesting. It was titled 'Fury at a bid to keep house prices secret'. Whilst this proposal has been supported by the REIQ, the Real Estate Institute of New South Wales is opposed to it. President Malcolm Gunning described it as a step backwards. Andrew Winter, the host of *Selling Houses Australia*, says that the legislation made Queensland look silly. However, the interesting thing in the article is that Anton Kardash, CEO of the Real Estate Institute of Queensland, which proposed the legislation, said that the state's agents wanted to preserve the status quo. I think I have put the views of the opposition and the views that were presented to the committee clearly on the record.

Mr Bleijie: No, you haven't—not competently. Move to New South Wales if you support them more than Queenslanders.

Mr DEPUTY SPEAKER (Mr Watts): Order!

Ms PALASZCZUK: Maybe you should follow ICAC a bit more closely.

Mr DEPUTY SPEAKER: Order!

Mr Bleijie interjected.

Ms PALASZCZUK: I am not taking interjections.

Mr DEPUTY SPEAKER: You just took one.

Ms PALASZCZUK: I now turn to the Motor Dealers and Chattel Auctioneers Bill. As previously mentioned, this is one of a suite of bills designed to split the Property Agents and Motor Dealers Act 2000 into four separate industry specific acts. The forerunner to this bill was introduced by the former Labor government in 2010 but lapsed when the parliament was prorogued. The bill, while including many of the features of the previous 2010 bill, has become a somewhat different creature. The opposition will not be opposing this bill. However, there are a number of issues that I will raise and some things that I seek clarification on from the Attorney-General.

The bill provides for two licences: one, a motor dealer licence which authorises the holder to acquire used motor vehicles primarily for resale, sell used motor vehicles, sell used motor vehicles on consignment as an agent for others for a reward, sell a leased motor vehicle to the lessee under the terms of the lease, acquire used motor vehicles whether or not as complete units to break up for sale as parts and to sell those parts, and act as a consultant for a non-motor dealer to buy or sell a used motor vehicle; and, two, an auctioneer licence which authorises the holder to sell or attempt to sell or offer for sale or resale any goods by way of auction. The Property Occupations Bill 2013 provides for an auctioneer licence which authorises an auctioneer to sell real property by way of auction and to sell goods by way of auction if the sale is directly connected with a sale by auction of a place of residence or land performed by the auctioneer. This means that one of the consequences of splitting the PAMDA into industry specific legislation is that an auctioneer who auctions both real property and

chattels will require two licences. Previously under the PAMDA only one licence was required by an auctioneer.

The 2008 review of the act by the Service Delivery and Performance Commission recommended that the auctioneer licence be removed altogether. Real estate agents should be provided authorisation to auction real property, motor dealers provided with authorisation to auction motor vehicles and other types of auctions would be subject to certain conduct requirements but not any licensing requirements. From a purely red-tape reduction perspective, that recommendation has some merit, but it removed any real capacity to provide adequate consumer protection. Even though it has potential for savings in terms of costs and red tape for members of the auctioneering industry, when weighing up the other benefits the industry itself has a strong preference to retain the licensing requirements for auctioneers.

The Australian Livestock and Property Agents Association Ltd, ALPA, does not support the proposed requirement for livestock and property auctioneers to hold two auctioneer licences. In its submission to the committee, it reiterated its support for the maintenance of a licensing system for auctioneers but restated its clear opposition to the dual licensing requirement. The explanatory notes explain this in quite some detail. This is an unfortunate consequence of the dividing of this bill into its component industries. I understand the reluctance of the auctioneering industry to embrace enthusiastically the dual licensing scheme; however, it is important that all sectors of the industry remain subject to licensing provisions. As the explanatory notes state—

Stakeholders believe that the existing licensing framework prevents unsuitable persons from entering the industry and ensures high standards of professional practice.

Statutory warranties under PAMDA apply differently to three classes of warranted vehicle: class A, class B and restorable. The class is determined on age and kilometres travelled and the statutory warranty provided for each class was originally designed to reflect reasonable expectations of the reliability of vehicles depending on those factors. The warranty for a class B vehicle—that is, a vehicle that has travelled over 160,000 kilometres or is more than 10 years old—applies up until the earliest of 1,000 kilometres travelled or one month expired after purchase. The statutory warranty remained unchanged in the previous 2010 motor dealers and auctioneers bill. In schedule 1 section 4 this bill provides that a statutory warranty only applies to class A vehicles. This is identical to the approach taken in New South Wales and Victoria, is comparable with remaining states and territories and in line with recommendations of stakeholders and the 2008 report. This issue was raised at the public hearing on the bill. The RACQ stated—

... we are particularly concerned with the reduced consumer protection that would result from class B provisions being removed and the financial burden that this would place on those who, due to financial constraints, must purchase vehicles in this class. Motor vehicles are in many cases a person's biggest financial commitment after a home and we strongly believe that consumers should not be disadvantaged simply because they are unable to afford a newer vehicle. For many, an older and more affordable vehicle will be the only one within reach and for some their only form of mobility.

The government's justification for this removal is set out in the explanatory notes, which state—

This system is unwieldy, and the requirement to provide what amount to short term statutory warranties for objectively older and lower value vehicles has been identified as an impediment to the viable legal sale of these vehicles. The former SDPC's 2008 report on the PAMD Act, and stakeholder submissions have also linked these requirements to the prevalence of illegal private purchases and subsequent sales of these vehicles by licensed or unlicensed dealers to avoid statutory warranty, cooling off and stamp duty requirements.

This is certainly not the evidence given to the committee's public hearing by RACQ's Steve Spalding, who said—

... we are particularly concerned with the reduced consumer protection that would result from class B provisions being removed and the financial burden that this would place on those who, due to financial constraints, must purchase vehicles in this class. Motor vehicles are in many cases a person's biggest financial commitment.

He then went on to say—

We agree with the Motor Trades Association of Queensland submission that the removal of the class B warranty cover will not achieve the benefits that the government and OFT suggests.

So the Motor Trades Association of Queensland does not want the statutory warranty removed and the RACQ does not want the statutory warranty removed. As it submitted to the committee, the RACQ is very concerned about the removal. We cannot support the removal of statutory warranty.

The Attorney-General in his introductory speech stated—

Links have been identified between criminal organisations and a number of business sectors, including the used-motor-dealing sector. The bill will prevent identified participants of criminal organisations from obtaining or holding a motor dealer licence or motor salesperson registration certificate.

There was a similar provision in the 2010 bill that provided that, once a person had been declared by the Supreme Court to be so involved in a declared criminal organisation, a control order was imposed on them and they could no longer be licensed under the Motor Dealers and Chattel Auctioneers Bill 2010. That was a stringent process requiring two declarations by the Supreme Court and actual evidence that the person had committed offences. As has become evident, the definition of 'participant' under the LNP government's laws does not require the commission of an offence. The concerning feature of this legislation, which takes away the person's right to earn a living in their chosen occupation, is that the refusal or cancellation of a licence can be on the information provided by the Police Commissioner.

There have been a couple of recent occasions where an allegation that a person is a vicious lawless associate has been made initially in court on the basis of police evidence. The difference is that those cases then see the full scrutiny of the judicial system and in a number of cases those allegations have been withdrawn. Unfortunately, because the decision of the chief executive in issuing a licence is made in secret, the person does not even have to be told that the licence has been refused on the basis of an allegation that they are a participant. Remember, being a participant does not require you to have participated in any way in the affairs of a criminal organisation. You may never have even been convicted of a criminal offence.

The President of the Council of Civil Liberties, Michael Cope, provided a submission to the committee. He encapsulates the concerns very well in that submission, so I will just quote briefly from it. It states—

... the Chief Executive of the Department when considering an application for a licence or to renew a licence or to restore a licence must inquire of the Commissioner of Police as to whether or not the applicant or a director of the applicant in the case of a corporation is a participant in a criminal organisation.

The Chief Executive may to cancel the licence if they become aware that the licensee or an executive officer of the licensee if it is a corporation has been identified as a participant in a criminal organisation. In this particular case the source of the information is not specified. Presumably then the information could come from somebody other than the Commissioner of Police.

Should the Chief Executive decide to refuse an application for, or cancel a licence on the participant ground ... the Chief Executive is not required to specify in his or her statement of reasons the fact a person is *alleged* to be a participant in a criminal organisation as the reason for their decision.

A more flagrant denial of the principles of natural justice is hard to imagine.

A member of the public who maybe entirely innocent of any offence may be deprived of their livelihood on the untested say so of a member of the executive namely the Commissioner of Police.

The Police Service has also provided information to police officers that persons were members of criminal organisations. Police officers have made the allegations in charging them. Those people are brought before the court only to have the allegation dropped because that person is not really a member of a criminal organisation. There has been some evidence of that recently.

Much of this bill is in accordance with the legislation that the previous government introduced. This government claims to be a government of red-tape reduction, but it is a government that is lowering protection for consumers. Labor's commitment is to reduce the regulatory burden on business while maintaining effective consumer protection. Unfortunately, this government's commitment is to strike an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace. This bill is a disappointment in that it removes some protections for consumers that have existed in Queensland for many years. We will be watching the developments with interest and calling the government to account where they fail to adequately protect Queenslanders.

I will now address the Debt Collectors (Field Agents and Collection Agents) Bill 2013. As stated when addressing the previous bills, we will not be opposing this legislation; however, we have some concerns. We know that the government is trumpeting this suite of legislation as a win for red-tape reduction, but it is important that members of parliament ensure that a reduction in red tape does not result in a reduction in consumer protection. We seek assurances from the government that consumer protection will not be watered down by this legislation. We also seek further information from the government about how these assurances can be achieved.

The particular area that I want to focus on is the introduction of a negative licensing scheme for collection agents. The bill provides the framework for the regulation of collection agents and field agents. It defines collection agents as those who collect debts without face-to-face contact with the debtor while field agents collect debts, repossess goods and service legal process through face-to-face contacts with the debtor or the person being served a notice.

As a result of this bill, the current licensing scheme that requires licences for those engaged in the activities of both collection agents and field agents will be replaced. Under the arrangements proposed in this legislation, those who are engaged in the activities of a collection agent will no longer be required to have a licence or be registered. Instead, they will have to meet a set of criteria or standards that are defined by law. That is known as a negative licensing system. Under this type of system, collection agents will not be required to hold a licence or registration certificate to conduct their work. However, a person may be prohibited from being a collection agent if that person fails to meet the prescribed suitability requirements.

As outlined in this bill, the suitability requirements state that an individual operating as a collection agent must be at least 18 years of age; must not have been convicted of a serious offence within the preceding five years; must not be an insolvent under administration; must not hold a field agent's licence or a subagent's registration certificate that is suspended; and must not be subject to an order by a court or tribunal disqualifying the person from holding a licence, registration certificate or performing a debt collection activity as a collection agent. Although the opposition understands the rationale for that approach, it has concerns that those provisions may allow some unsavoury characters to become involved in debt collection with very minimal levels of scrutiny over their background and activities.

The former Labor government's proposed Commercial Agents Bill 2010 still would have required a positive licensing regime for collection agents as well as for field agents. In their submissions to the Legal Affairs and Community Safety Committee the Bar Association and the Caxton Legal Centre both expressed concerns about the move to a negative licensing system for collection agents. The President of the Bar Association, Mr Peter Davis QC, outlined his concerns in the association's submission to the committee. He stated—

> The Association expresses its concern that collection agents are automatically authorised to engage in debt collection. Whilst it is accepted that misconduct of collection agents will still be captured under that proposed Act, some debtors because of their circumstances are vulnerable to unscrupulous operators even when that contact is by telephone or correspondence. I suggest a licensing regime which catches all those involved in collection of debts is a necessary part of an effective regulatory scheme.

Similar concerns were expressed by the Caxton Legal Centre. I seek from the Attorney-General a detailed explanation as to how he envisages this regime working and what safeguards are in place to ensure that unscrupulous operators are not encouraged to participate in the system. Further, will the Attorney-General outline what resources there will be for consumers who have genuine or legitimate complaints about the conduct of collection agents? We want to avoid the situation where we have a bunch of standover merchants attracted to the work of collection agents because the level of licensing and regulation has been reduced. The work of collection agents may be considered low risk, but try telling that to a person who receives a threatening or intimidating phone call.

During the committee hearings the Deputy Leader of the Opposition, the member for Mackay, raised the point that organised crime is involved in debt collection activities and that, therefore, it is imperative that we have a strong regulatory regime to control this industry. Can the Attorney-General outline what actions can be taken against a collection agent who is found to be acting outside the parameters of the law? Can the Attorney-General outline how the new regime will prevent the infiltration of organised crime figures or other unsuitable individuals into the ranks of collection agencies?

I will now touch briefly on some of the other main elements of the bill. The bill removes the requirement for a principal field agent to maintain an up-to-date employment register which was required to be kept up under the PAMD act. The employment register was required to include the name of each employed licence holder and employed subagent and the activities each employed subagent is authorised to perform. The former Labor government's proposed Commercial Agents Bill would have required an employment register to be maintained. While the removal of the requirement to keep this register seems to be generally accepted as a worthwhile step, the opposition still holds some reservations: in particular whether this step, combined with the negative licensing scheme for collection agents, will allow unscrupulous operators to more easily enter the industry and escape detection.

The bill also will result in the introduction of suitability, checking, reporting and monitoring, or SCRAM, reports to the industry. Under the act, criminal history checks on applicants for licences and registration certificates are currently undertaken at the initial application stage and at the renewal and restoration stage. However, renewal for a licence may occur annually or once every three years depending on the term of licence the applicant chose to apply for. The bill introduces the ability for the Commissioner of Police to notify the chief executive of changes in criminal histories of licensed holders, subagents and collection agents who are required to maintain trust accounts. This is done through an automated process referred to as suitability, checking, reporting and monitoring—

SCRAM—which allows the reporting of changes to criminal histories within the jurisdiction of Queensland. This is a worthwhile step, although the opposition would appreciate the government providing further details about how this process will operate in practice.

I will now address the fourth and final bill in this cognate debate, the Agents Financial Administration Bill 2013. Once again the opposition will not be opposing this bill. There is very good reason why the opposition has adopted this position for this particular legislation. That is because this bill is very similar to the bill of the same name introduced into the previous parliament by the former Labor government. The Agents Financial Administration Bill has two main purposes: to regulate agents' trust accounts and to establish and regulate a claim fund. The only issue raised by anyone was in relation to a reduction in the penalties for some offences under this bill. At the public briefing on the bills the member for Mackay asked departmental officers about the reduction in penalties contained in various clauses from 16 to 27. The explanatory notes for this bill state—

The Bill reduces current penalties under the PAMD Act to allow infringement notices to be issued for more minor trust account breaches, such as an early drawing of a commission from a trust account. Under the PAMD Act, these offences attract a maximum penalty of three years imprisonment. Consequently, under the PAMD Act, they are indictable offences and an infringement notice cannot be issued. The Bill reduces the penalties from three years to two years, which provides an efficient and appropriate means of enforcement for relatively minor breaches.

As the member for Mackay queried at the hearing—

That is a bit more than red-tape reduction, isn't it? It is reducing the penalty for people who steal money from a trust account, like the Friday-Monday rule. You take it out Friday, spend it at the track on Saturday and Sunday, and put it back in on Monday. It is stealing. It is more than red-tape reduction.

The departmental response to the member's query was basically that the infringements under these sections are usually relatively minor. Therefore, because the penalty is three years it would require a full prosecution which would rarely be justified in those circumstances. It would therefore be rare for action to be taken. By reducing the penalty to two years the matter can be proceeded with by way of an infringement notice which is more likely to occur. The Bar Association in its submission stated that it was satisfied with the explanation provided to the committee for this proposed change to penalties. The opposition too is satisfied with this explanation. We note that these penalties were also reduced in the 2010 bill introduced by the previous government.

These bills, as I said previously, are largely based on a suite of bills by the previous government brought before the parliament in 2010. However, there have been some significant changes to those proposed laws by the Newman government that will reduce consumer protection and shift the balance away from an appropriate level of red-tape reduction that also maintains appropriate standards of consumer protection. I have outlined those aspects of the bill that the opposition cannot support and I look forward to the Attorney-General addressing some of my concerns in his speech in reply.