



Speech By  
**Hon. Jarrod Bleijie**


**MEMBER FOR KAWANA**

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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**

**Second Reading (Cognate Debate)**

 **Hon. JP BLEIJIE** (Kawana—LNP) (Attorney-General and Minister for Justice) (3.42 pm): I move—

That the bills be now read a second time.

Today we are debating bills that will provide a modern framework for the regulation of the real estate industry in Queensland. But in looking to the future we must always be conscious of the past and the dedication and commitment of those who have gone before us. I would like to pay tribute to Mr Alexander Overett, who sadly passed away on 16 March 2014 at the age of 89. As I will outline, Mr Overett made an enormous contribution to the development of the real estate industry in Queensland.

Mr Overett was a real estate agent and auctioneer who went on to be appointed as a president of the Real Estate Institute in the early 1970s and to serve for some 20 years as a member and chair of the then Auctioneers and Agents Committee. In 1992, the Auctioneers and Agents Review Committee, which was chaired by Mr Overett—and indeed became known as the ‘Overett Committee’—conducted a review that would shape how the real estate industry was regulated for many years to come.

In the 1996 Australia Day Honours, Mr Overett was awarded the Medal of the Order of Australia for his service to business and commerce, particularly through the Auctioneers and Agents Committee. It is fitting and my pleasure today to acknowledge Mr Overett’s enormous contribution to the real estate industry in Queensland and his role in shaping public policy for the industry. I would like to place on record the government’s thanks for Mr Overett’s many years of service to Queensland’s property sector and to extend my sincere sympathy and condolences to his family and friends.

I thank the Legal Affairs and Community Safety Committee for its consideration 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 the Agents Financial Administration Bill 2013. I also thank the industry and community stakeholders that took the time to make submissions and present evidence to assist the committee in its deliberations about the bills.

The government acknowledges and appreciates the committee’s recommendations that the bills be passed. I also note the committee has recommended amendments to improve the operation of the Property Occupations Bill, the Motor Dealers and Chattel Auctioneers Bill and the Agents Financial Administration Bill. I flag to the House that I will be moving amendments during

consideration in detail to incorporate the committee's recommended amendments to the bills and to deal with a number of other matters. For the benefit of the House, I table the government's responses to the committee reports.

*Tabled paper:* Legal Affairs and Community Safety Committee, Report No. 51 on the Property Occupations Bill 2013, government response [\[4994\]](#).

*Tabled paper:* Legal Affairs and Community Safety Committee, Report No. 52 on the Motor Dealers and Chattel Auctioneers Bill 2013, government response [\[4995\]](#).

*Tabled paper:* Legal Affairs and Community Safety Committee, Report No. 53 on the Debt Collectors (Field Agents and Collection Agents) Bill 2013, government response [\[4996\]](#).

*Tabled paper:* Legal Affairs and Community Safety Committee, Report No. 54 on the Agents Financial Administration Bill 2013, government response [\[4997\]](#).

The government was elected with five key pledges—two of which very much relate to this bill—and they are to grow a four-pillar economy based on tourism, agriculture, resources and property/construction and also to revitalise front-line services for families by cutting waste. The waste in which I am referring to is all about red tape and in a sense our target to reduce red tape by 20 per cent in six years.

The four bills being considered today will facilitate the repeal and replacement of the Property Agents and Motor Dealers Act 2000—an act that has become notoriously cumbersome and difficult to navigate. In its place the bills will establish a more modern, streamlined legislative framework for the real estate, used motor vehicle, chattel auctioneering, debt collection and process-serving industries. The bills will split the Property Agents and Motor Dealers Act along industry lines and establish three separate, industry specific acts dealing with occupational licensing and other regulatory matters for the relevant industries.

The three industry specific acts will be supported by a separate Agents Financial Administration Act dealing with trust accounting and other financial obligations of licensees and registered employees across the three industry specific statutes. The Agents Financial Administration Act will also continue the operation of the claim fund currently provided under the Property Agents and Motor Dealers Act to assist consumers who suffer financial losses because of particular types of conduct of a licensee. The new legislative framework will avoid the one-size-fits-all approach, which is one of the key weaknesses of the Property Agents and Motor Dealers Act.

However, it is much more than a simple structural realignment of existing provisions. The bills also deliver substantial reductions in regulation and red tape currently imposed on individuals and businesses working in the industries covered by the Property Agents and Motor Dealers Act, while maintaining appropriate consumer protections. Before hearing from honourable members, I would like to take the opportunity to highlight some of the key reforms contained in each of the bills.

The Property Occupations Bill will provide a simpler licensing framework for real estate agents, resident letting agents and real property auctioneers. The bill will reduce regulation and red tape that is unnecessarily adding costs and other burdens for property professionals, people buying and selling real property and the broader community. Importantly, the bill will streamline home sale contracts which delivers on a key government election commitment. Currently, the Property Agents and Motor Dealers Act prescribes a complex process which must be followed when presenting residential real estate contracts.

Contraventions of technical requirements under the Property Agents and Motor Dealers Act can provide grounds for terminating the contract—a remedy that can be excessive and disproportionate for a relatively minor breach of legislation. The bill repeals existing warning statement provisions and replaces them with a simple requirement for a prescribed statement to be included in particular home sale contracts. The consequence for failing to comply with these new provisions will be a maximum penalty instead of a termination right.

To further reduce red tape, the bill will rationalise and consolidate the existing licence categories in the Property Agents and Motor Dealers Act. The bill also removes the requirement for property developers and their employees to be licensed. It is considered that this significant red-tape reduction measure will generate employment growth; reduce barriers to entry in the property developer market; encourage market entrants; and, in turn, increase competition. This approach brings Queensland in line with other jurisdictions, as Queensland is currently the only state to license property developers.

I know many members are aware of recent media coverage and commentary about the provisions in the Property Occupations Bill designed to clarify the existing provisions of the Property Agents and Motor Dealers Act prohibiting agents and auctioneers from providing price guides for properties to be sold by auction or without a price. Restrictions on providing price guides for these types of sales have been part of Queensland law since 2006, in response to concerns that some agents were overquoting and underquoting the anticipated sale price to the detriment of both buyers

and sellers. The government accepts there are legitimate arguments both for and against allowing price guides. Members will be aware that a number of Australian jurisdictions have grappled with the issue and sought to address it in a number of different ways.

The Queensland government considers that price guides for auction properties are problematic for consumers and agents, and our position has been supported by the industry peak body for real estate agents in Queensland, the REIQ. We have also listened to the concerns of stakeholders, particularly in relation to issues for online real estate search portals. The government understands that legislation needs to keep pace with technology, so I will be moving amendments to the bill which will ensure the policy intention of provisions banning price guides is achieved without adversely impacting on the functionality of real estate website portals.

I am also aware of reports in the media, and what seems to be the view by some, that agents are not able to provide buyers with any market information about a property for sale by auction or without a price. However, the bill allows an agent, with a seller's written consent, to give any person, which includes, for example, a buyer or a property journalist, with market information about a property through the form of a comparative market analysis. There are also numerous online sources that provide market information about properties.

This information provides objective, not speculative, data to assist a buyer to work out what a property may be worth to them. This information will also assist property journalists and writers to prepare real estate profiles and editorial pieces without the need for real estate agents or auctioneers to breach provisions preventing disclosure of price guides for auction properties. I note that, after examining the provisions and hearing from stakeholders both for and against price guide restrictions, the Legal Affairs and Community Safety Committee commented—

... it is essential for the process in a sale of a property by auction for there to be a true market price—and that there should be no distortion of the market value by an agent or auctioneer providing potential buyers with an indication on price.

Prohibiting agents from giving a price guide indication for auction properties, or properties for sale without a price, also creates a level playing field for the industry. Some interstate experiences have shown that allowing price guides, even within set legislative parameters, provides an opportunity for unscrupulous agents to push the envelope with their price guides to the competitive disadvantage of agents who adopt a more prudent, realistic and responsible approach to price information. It has also seen trends emerge such as 'step quoting', which one property website describes as a more legitimate form of underquoting where the price is deliberately quoted low at first and then increased during the sales campaign to nearer the real reserve. These are the types of uncompetitive practices the bill aims to avoid so there is no distortion of the market by agents and a true market price can be achieved.

While supporting the government's approach to price guides, the committee recommended that the bill be amended to clarify that it is not intended for an auctioneer to be in breach of the provisions if during the course of an auction they announce a property is 'on the market' or similar once the reserve price has been reached. The government has taken note of this practical suggestion, which will clarify and improve the operation of the legislation, and I will be moving an amendment to incorporate the committee's suggested change into the bill.

I will also be moving several small amendments to the bill to address a minor issue in the youth justice area of my portfolio. The Youth Justice and Other Legislation Amendment Act 2014 amended the Youth Justice Act 1992 to provide for the administrative transfer of offenders from youth detention to adult corrections on turning 17 if they have at least six months left to serve in detention. While these provisions are operating effectively in relation to offenders sentenced to detention after commencement of the amendments, some clarification is required to ensure they also apply effectively to offenders sentenced before commencement. This bill, being the first I have introduced since the youth justice amendment bill, is the appropriate vehicle to do so.

The Motor Dealers and Chattel Auctioneers Bill will contribute to the split of the Property Agents and Motor Dealers Act by providing for licensing and regulation of used motor dealers, motor salespersons and chattel auctioneers. Like the other bills, this bill will strike a balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace. The Motor Dealers and Chattel Auctioneers Bill will implement significant red-tape reduction measures including simplification of statutory warranty requirements; reduction in the number of approved forms; removal of the trainee auctioneer category of registered employee; removal of client referee requirements for auction sales of livestock; increased flexibility of appointment to act arrangements; and removal of various administrative obligations.

In consulting on the Motor Dealers and Chattel Auctioneers Bill, a number of stakeholders in the used motor vehicle industry advocated for new regulations to deal with particular issues arising in the industry. These proposals were given careful consideration. However, this package of legislation is principally designed to reduce regulation and red tape for the industries currently regulated by the Property Agents and Motor Dealers Act. Therefore, proposals for increasing regulation have generally not been incorporated into the bills.

The government is also committed to ensuring legislation meets its consumer protection and other objectives. The Motor Trades Association of Queensland has made representations to me advocating for motor dealer licence applications to be refused if the dealer cannot demonstrate that they will be operating from premises approved by the relevant local government. I appreciate the MTAQ's concerns about motor dealer premises, which is a complex policy issue, and I affirm the government's commitment to working with the MTAQ to stamp out unlicensed used motor dealing in the Queensland marketplace. Members may have noticed in the media recently that the Office of Fair Trading is currently undertaking 'Operation Round-up', a targeted compliance operation to identify and take action against unlicensed used motor dealers.

Members may also be aware that some auctioneer stakeholders are disappointed that their activities will be split across two bills—that is, real property auctioneers will be regulated by the Property Occupations Act while chattel auctioneers will be regulated under the Motor Dealers and Chattel Auctioneers Act. While the split of the Property Agents and Motor Dealers Act will deliver real savings and efficiencies, one of the unavoidable consequences of splitting the act along industry lines is that people who work across different industry sectors will be subject to more than one act. However, the government is committed to ensuring that all possible administrative efficiencies are implemented to ensure that auctioneers who auction both real property and chattels will not be disadvantaged by the split of the act. For example, there will not be an additional application or licence fee for auctioneers wishing to hold not only a real property auctioneer licence but also a chattel auctioneer licence. There will be one. The Office of Fair Trading will work with stakeholders to ensure implementation of the new licensing framework is as smooth and streamlined as possible.

One of the important elements of the Motor Dealers and Chattel Auctioneers Bill is that it contains provisions to ensure identified participants of criminal organisations are prevented from holding or obtaining motor dealer licences and registration of certificates. This reinforces the government's strong focus on law and order and provides the community with assurance that people authorised to work as used motor dealers or salespersons have been subject to rigorous probity requirements.

The committee recommended the bill be amended to ensure the method for determining vehicle age, as part of defining a 'warranted vehicle', is clearer and applicable to a full range of vehicle labelling types. Accordingly, I will be moving amendments during consideration in detail of this bill to include the full array of legitimate label types that may be attached to motor vehicles for the purpose of identifying the age of a vehicle. This will improve the operation of the legislation and provide clarity. I will also be moving amendments to clarify how the bill works in relation to Commonwealth personal property securities laws.

The Debt Collectors (Field Agents and Collection Agents) Bill will provide a system for regulating debt collectors and their employees, and a way of protecting consumers against particular undesirable practices associated with the debt collection activities. As well as reducing red tape that is unnecessarily burdening individuals and businesses carrying out debt collection and process-serving functions, this bill provides a significant change in the way the debt collection industry is regulated in Queensland.

The government understands that the debt collection industry needs to be appropriately regulated in the interests of protecting consumers, particularly vulnerable members of our community. However, the regulatory approach should be sophisticated and reflect risk management principles. In this respect, the bill recognises that the debt collection industry has developed into two distinct specialisations: collection agents and field agents. Collection agents only engage in activities of collecting and requesting the payment of debts. Collection agents perform their activities without face-to-face contact with the debtor—for example, the collection agent may only contact debtors by telephone.

Field agents may engage in the finding and repossession of goods and chattels under an agreement, collecting and requesting the payment of debts, and serving any writ, claim, application, summons or other similar process. Unlike collection agents, field agents typically undertake their debt collection activities through face-to-face contact with the debtor or the person being served. In

recognition of the difference in the two sectors, the bill introduces a negative licensing regime for collection agents while maintaining the positive licensing regime for the field agent sector. Under the negative licensing regime, a person is not required to hold a licence or registration certificate to work as a collection agent. The introduction of the negative licensing regime is intended to provide a more risk appropriate response to consumer issues relating to collection agents. In dealing with collection agents, the debtor maintains much more control over how they manage their interaction. For example, the debtor can choose to terminate the phone call if they feel threatened.

While the bill does not require collection agents to apply for and obtain a licence, people who do not satisfy particular suitability and probity criteria will be prohibited from performing debt collection activities. In addition, collection agents will continue to be subject to the same conduct requirements as field agents and continue to be required to keep amounts received for a debt collection activity in a trust account. In this way, the bill ensures that only appropriate persons are engaged as collection agents and that the conduct of collection agents is monitored.

An additional benefit of the negative licensing scheme is the fact that collection agents no longer need to spend time and costs in both paperwork and fees required to apply for, or renew, a licence. Accordingly, the negative licensing regime will significantly reduce red tape for this sector without reducing consumer protection. However, the government recognises unfair pressure can be more easily applied through face-to-face contact and that vulnerable debtors should be protected from unscrupulous debt collectors. It is for this reason that the bill continues to provide a positive licensing regime for field agents. While the committee did not recommend for the bill to be amended in any respect, a number of minor drafting errors were identified by the department during the committee process. As such, I would like to foreshadow that I will move minor amendments to the bill during consideration in detail.

The Agents Financial Administration Bill deals with particular financial obligations of agents who are regulated under the industry specific bills. In particular, the bill imposes trust account requirements on licensees and establishes a claim fund, similar to the one operating under the Property Agents and Motor Dealers Act, which compensates consumers who suffer financial loss as a result of particular actions of agents. The bill consolidates these provisions into one act, thereby avoiding the need to duplicate the provisions across each of the industry specific bills. However, the bill does not merely replicate the relevant PAMD Act provisions but also contains changes and improvements which are intended to streamline trust account requirements and the claim fund processes. Licensed agents who are required to hold money in a trust account will benefit from simpler, more logical provisions that regulate the establishment and operation of trust accounts.

The bill will also improve the operation of the claim fund by promoting administrative efficiencies in receiving, determining and paying claims, which will ultimately benefit consumers, government and agents. For example, the bill will provide flexibility in the jurisdiction in which a claim may be heard based on the claim's complexity, will allow truncation of the claims process where this is justified on a cost basis and will facilitate immediate payment of claims in urgent or other appropriate circumstances. The government thanks the committee for identifying minor drafting errors in the bill. These errors will be corrected through amendments to be moved during consideration in detail of the bill.

If passed, the bills, other than the amendments to the Youth Justice Act to be moved as amendments to the Property Occupations Bill, will not commence straight away. The government is mindful of the importance of providing an appropriate implementation period for industry and government to ensure the transition to the new laws are as smooth as possible and that industry professionals have access to the information they need about the new legislation.

I thank the REIQ particularly, an industry that has worked with us on these laws to make sure that we make the government's commitment of reducing regulation and red tape by 20 per cent the best it can ever be. This bill will achieve that objective. I commend the bill to the House.