

# **Debt Collectors (Field Agents and Collection Agents) Bill 2013**

## **Explanatory Notes**

### **FOR**

## **Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP**

### **Title of the Bill**

Debt Collectors (Field Agents and Collection Agents) Bill 2013

### **Objectives of the Amendments**

The objectives of the amendments to the Bill are to maintain consistency with the Property Occupations Bill 2013 and the Motor Dealers and Chattel Auctioneers Bill 2013, to address minor drafting errors, and to ensure consistent terminology is used throughout the Bill.

#### *Amendment to the definition of 'prescribed provisions' under clause 6*

The objective of the first amendment is to maintain consistency with the Property Occupations Bill 2013 and the Motor Dealers and Chattel Auctioneers Bill 2013 with respect to clause 6.

Clause 6 of the Bill provides that particular persons appointed as administrators, receivers, liquidators or other controllers, for a corporation or individual, are exempt from particular prescribed provisions of the Bill while performing a regulated activity in relation to the business for which they are appointed. Clause 6 defines the term 'prescribed provisions' as meaning sections 21, 23, 25, 26, 28 and 30.

The definition of 'prescribed provisions' is inconsistent with the Property Occupations Bill 2013 and the Motor Dealers and Chattel Auctioneers Bill 2013, and therefore, the amendment seeks to clarify the definition of 'prescribed provisions' so as to ensure consistency, where relevant, with the foregoing Bills.

***Amendment to clause 67***

The objective of the second amendment is to retain the chief executive's power to suspend a person's licence if the chief executive reasonably believes the person has contravened the *Property Agents and Motor Dealers Act 2000* before the Bill commences.

***Amendment to clause 74***

The objective of the third amendment is to enable a licence to be issued or renewed for a term shorter than the prescribed 1-year or 3-year term in particular circumstances, which are to be prescribed by regulation.

Clause 74 of the Bill provides that a licence may be issued for a 1-year or 3-year term. However, there are a range of circumstances when this may impose unnecessary administrative burden on licence holders and government, and it may be beneficial to instead issue or renew a licence to a person for a term shorter than 1 or 3 years. Accordingly, the amendment provides power for a regulation to prescribe the circumstances under which a licence may be issued or renewed for a shorter term.

***Amendment to clause 96***

The objective of the fourth amendment is to retain the chief executive's power to suspend a person's registration if the chief executive reasonably believes the person has contravened the *Property Agents and Motor Dealers Act 2000* before the Bill commences.

***Amendment to clause 101(3)***

The objective of the fifth amendment is to correct a minor drafting error in clause 101(3), that being an incorrect reference to subclause (3).

***Amendment to clause 150***

The objective of the final amendment is to ensure that clause 150 uses terminology consistent with the rest of the Bill.

Specifically, clause 150(2)(a) refers to 'entities' applying for a licence, while all other provisions of the Bill relating to applications for a licence typically refer to 'a person' or 'persons' making the application. Accordingly, the amendment seeks to improve the operation of the Bill by ensuring that the terminology used within clause 150(2)(a) is consistent with the rest of the Bill.

## **Achievement of the Objectives**

The objectives are to be achieved by making minor amendments to the Bill during consideration in detail.

## **Alternative Ways of Achieving Policy Objectives**

Legislative amendment is the only means of achieving the policy objectives.

## **Estimated Cost for Government Implementation**

The proposed amendments will not impose additional costs on Government to those outlined in the Explanatory Notes to the Bill.

## **Consistency with Fundamental Legislative Principles**

The proposed amendments are generally consistent with fundamental legislative principles.

However, the amendment to clause 74 raises a possible breach of the fundamental legislative principle that legislation is required to have sufficient regard to the institution of Parliament (*section 4(2) of the Legislative Standards Act 1992*). More specifically, it could be argued that the amendment to clause 74 to allow a regulation to prescribe circumstances where a licence may be issued or renewed for a shorter term than that specified in clause 74 enables the application of the primary legislation to be affected by subordinate legislation or executive action (that is, the amendment may amount to a ‘Henry VIII’ clause).

The possible breach of fundamental principles is considered justified for the following reasons.

Under clause 74, a licence may be issued for a 1-year or 3-year term. However, there are a range of practical circumstances where it is both appropriate, and in the interests of licensees and government, for the legislation to provide administrative flexibility for licences to be issued for a shorter term.

For example, the particular operations or structure of a regulated business can be complex and may mean that multiple individual or corporate licences are held in relation to the business. In some cases, these licences will be applied for (and therefore issued) at different times, resulting in different expiry dates applying to the licences.

By providing capacity to issue licences for a shorter term than the prescribed 1 or 3 year period, the amendment will allow the Office of Fair Trading to align expiry dates applying to the licences, thereby streamlining and reducing costs for both licensees and government associated with licence renewal processes.

The amendment to clause 74 promotes administrative efficiency in the licensing process. By allowing the circumstances under which a licence may be issued for a shorter term to be prescribed by regulation, the amendment will enable the licensing framework to be responsive to the needs of regulated businesses while also ensuring transparency about when shorter terms can be applied to licences by the chief executive.

## **Consultation**

The Queensland Parliament’s Legal Affairs and Community Safety Committee sought public comment on the Bill by inviting written submissions from all Queenslanders and holding a public hearing.

However, the proposed amendments to the Bill principally stem from further review of the Bill by the Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel. The proposed amendments do not impact on, or change, the policy intent of the provisions being amended. Accordingly, separate consultation has not occurred on the amendments.

## NOTES ON PROVISIONS

**Amendment 1**                      **Clause 6 (Administrators etc.)**

Amendment 1 amends the definition of ‘prescribed provisions’ under clause 6 of the Bill by omitting the reference to section 26.

**Amendment 2**                      **Clause 67 (Immediate suspension)**

Amendment 2 amends clause 67(1)(e) to provide that if the chief executive reasonably believes a field agent has contravened the *Property Agents and Motor Dealers Act 2000* the chief executive may suspend the field agent’s licence.

**Amendment 3**                      **Clause 74 (Term of licence)**

Amendment 3 amends clause 74 by inserting a new subsection (2) which provides the power for a regulation to prescribe the circumstances under which a licence may be issued or renewed for a shorter term.

**Amendment 4**                      **Clause 96 (Immediate suspension)**

Amendment 4 amends clause 96(1)(c) to provide that if the chief executive reasonably believes a subagent has contravened the *Property Agents and Motor Dealers Act 2000* the chief executive may suspend the subagent’s registration.

**Amendment 5**                      **Clause 101 (Registration register)**

Amendment 5 amends clause 101(3) by omitting the reference to subsection (3) and replacing it with a reference to subsection (2).

**Amendment 6**                      **Clause 150 (Regulation-making power)**

Amendment 6 amends clause 150(2)(a) by omitting the reference to ‘entities’ and replacing it with a reference to ‘persons’.