



**STATUTES AMENDMENT (REAL ESTATE INDUSTRY REFORM) BILL
21 November 2006**

Adjourned debate second reading.

(Continued from 26 October. Page 1155.)

Mrs PENFOLD (Flinders): The opposition, consumers and responsible members of the real estate industry all support changes in the legislation which will increase transparency and fairness and which will help to eliminate poor and dishonest practices. We are aware that this bill 2006 is the government's response to the Rau report on the real estate industry in South Australia, which was presented in December 2002 to the then minister for consumer affairs, the Hon. Michael Atkinson, and accept that the member for Enfield was moved to prepare his report to advance consumer protection.

The changes proposed will amend three separate acts—the Conveyancers Act 1994, the Land Agents Act 1994, and the Land and Business (Sale and Conveyancing) Act 1994—and they are, therefore, quite complex. The Rau report was driven by key consumer concerns about real estate practices at that time, in particular, when the market was considered hot—or, in other words, it was a seller's market. The report included, but was not limited to, dummy bidding at auction, transparency in transactions, and under and over-quoting.

I note the formation, in March 2003, of a working party to address the issues raised in the Rau report. I also note that it presented its final report in July 2003—more than three years ago—when it set out a clear set of recommendations, including legislative changes, and recommended further negotiation on other real estate issues. It was clearly anticipated in the report that further consultation with industry should take place to provide input into the development of legislation and attendant regulations so that practical implications of any changes met the desired outcomes.

I would expect the minister to have taken advantage of all the input and advice offered to her in the course of drafting this legislation, and I would like to think that she has availed herself of industry and consumer recommendations over and above those made by the working party three years ago. However, it has been brought to my attention that the legislation tabled in parliament has a number of potentially detrimental consequences for ordinary South Australians who are buying and selling their homes.

Therefore, I am not sure whether this consultation occurred fully—certainly not up to the point just prior to being approved by cabinet. It is extremely important to note that the original consultation underpinning this bill was undertaken during a period where it was a sellers' market. Over the last few years real property has been very strong and this, to some extent, has enabled sellers to dictate their prices and terms. The opposition recognises that sometimes this alienates buyers, which was the cause of some angst and complaint.

However, with an eye to the future, we are concerned that during the last few months there has been a significant change in the marketplace, which has cooled considerably. The whole dynamics of the industry have changed, with the buyer starting to dictate terms in the auction process. This has been because of factors such as interest rates and the impact of drought and higher fuel prices. In the light of the changed circumstances, I remain unconvinced that some of the amendments will help the auction process and gain the best outcome for all parties.

Feedback we have received from the Real Estate Institute of South Australia and the Society of Auctioneers and Appraisers indicates that the Auction Code of Conduct (introduced by the industry in October 2003) deals successfully with the issue of dummy bids. I have been advised that, since the introduction of the code, there have

been no complaints to the Office of Consumer and Business Affairs. It would seem as if this section of the bill is an attempt to fix a problem that is no longer a problem. As the saying goes: if it ain't broke, don't fix it!

The same can be said of vendor bids. If there is a full and frank disclosure of each vendor bid up to but not including the reserve price, I fail to see how this can mitigate against the buyer. A reserve price is a reserve price. Nothing will happen if it is not reached. Once it is reached, vendor bids cease. If the flow of the auction is interrupted and it ceases before the reserve is reached it will force these sales towards tender or expression of interest systems which, in my view, are far less transparent. In New South Wales, which has introduced a similar system to that proposed, I am told that auctions have reduced considerably.

I also ask why the government feels the need for legislation which could compromise the auction process for both vendor and purchaser and which compromises the privacy of bidders by insisting on an onerous and, I believe, impractical bidder registration system and by making the use of auction paddles obligatory. I support the consensus of real estate agents that they should be able to use their best endeavours to have bidder details recorded before and at the cessation of auctions if late bidders emerge. I am advised that this is consistent with the industry auction code of conduct.

I am also advised that currently most bidders are registered with the agency prior to the auction. I am advised that industry put forward the idea of a real estate board to handle consumer complaints. This appears to be a very positive suggestion that is not reflected in the legislation. It appears to be an opportunity that has been overlooked. It would be interesting to hear the minister's reason for not taking up this opportunity while a reform process is underway. That said, there is much in the legislation which is of worth and which is supported by the opposition.

It has been said often enough that buying and selling a house is for many people the most significant contractual exercise they will undertake in their lifetime. Members on both sides of the house need to understand that, to respect that and to make it as easy and safe for people as possible to buy their home. The opposition is committed to making legislation work. We are always happy to work with the minister to get it right for everyone. This legislation arises from a report which was written four years ago and which was considered by a working party three years ago. Clearly, the government was in no hurry to bring the bill to the parliament. Clearly, then, we can spend a little more time to get it right; and, if it lies on the table for a little longer, that may be a good idea. I support the bill. Debate continued.....

The Hon. J.M. RANKINE (Minister for Consumer Affairs): I thank all members of this chamber who have contributed to this second reading debate. I thank the shadow minister for her contribution and acknowledge that she does have some questions that she wants answered when we reach the committee stage. We are happy to do our best to answer and facilitate any queries she may have.

Debate continued.....

I thank all those who have contributed to this bill and again acknowledge the work of the member for Enfield in doing all the collaborative work around this piece of legislation and look forward to progressing through committee to the third reading.

In committee. Clause 1 passed. Progress reported; committee to sit again.