

REAL ESTATE AND BUSINESS AGENTS AMENDMENT BILL 2007

Introduction and First Reading

Bill introduced, on motion by **Ms S.M. McHale (Minister for Consumer Protection)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MS S.M. McHALE (Kenwick - Minister for Consumer Protection) [12.10 pm]: I move -

That the bill be now read a second time.

This bill amends the Real Estate and Business Agents Act 1978. The principal object of the act is to govern the activities of real estate and/or business agents. Licensed agents typically operate as real estate firms, and are small businesses, either as sole traders in a partnership or a body corporate. This is reflected in many of the key provisions contained in the act.

I have recently become aware that Western Australia may be out of step with other states in respect of the business agents licensing regime. In essence, business agents act in relation to the sale of a business. This bill assists in delivering the state government's commitment to remove red tape while making the marketplace fairer and more competitive. The government understands that in other states some financial institutions are able to assist small business with business services such as succession planning. The provision of this service ensures that the financial and business planning needs of small businesses can be addressed in a comprehensive and holistic way. In Western Australia, a business offering these services would be required to be licensed under the act.

In applying for a licence under the act in Western Australia, a body corporate that has four or more directors must have at least two directors who are individually licensed under the act. To obtain a licence, an individual must pass prescribed examinations. Those examinations are linked to tertiary courses that are conducted only in Western Australia. Individual licence holders must also attend ongoing compulsory professional development while holding a licence, and may be refused renewal of their triennial licence certificate if they fail to do so. It is also necessary for a body corporate to maintain a registered office in Western Australia. Clearly, some of these requirements are impractical for entities operating in a national market.

The existing exemptions from the licensing regime provided under the current act are limited when compared with equivalent schemes in other states. Currently, exemptions in the act apply to bodies corporate that are authorised to obtain a grant of probate; financial services licensees when dealing in securities; and holiday accommodation managers. This bill will result in greater consistency with other states, which is imperative in an increasingly national market. In New South Wales, for example, financial services licensees are completely exempt from the requirement to hold a licence under that state's Property, Stock and Business Agents Act 2002.

Financial services licences are regulated by the Australian Securities and Investments Commission and may be subject to the Australian Prudential Regulation Authority's prudential requirements. A financial services licence is necessary for businesses that provide financial advice, deal in a financial product, make a market for a financial product, operate a registered scheme or provide a custodial or depository service. The obligations imposed by the Australian Securities and Investments Commission on financial services licences, as set out in the Corporations Act 2001, are extensive. In some respects these federal requirements exceed those of business agents licensed under the current act. This bill amends the act to provide for the definition of "business agent" to be varied by regulation. This will effectively allow persons or classes of persons that undertake the role of a business agent to seek an exemption from the business agents licensing regime.

Persons or entities that are exempted would still require a licence under the act if they wished to act as a real estate agent, rather than as a business agent. This is seen as an important safeguard against exempted persons bypassing the specific requirements of the act that regulate the real estate sales industry.

The proposed amendment does not grant an exemption from the act to any particular person or entity. Rather, the proposed amendment creates a regulation-making power to allow for exemptions to be made under the act. Any person or entity seeking exemption would be required to make an application to the Minister for Consumer Protection, who would then seek the advice of the Department of Consumer and Employment Protection on the merits of that application. Applications would be considered on a case-by-case basis and would involve consultation with all interested stakeholders. Each application would be assessed on its merits, and would include consideration of the effect of the exemption on competition, and the existence of and the compliance with other regulatory controls, which may, for example, include regulation by ASIC and the Australian Prudential Regulation Authority. Ultimately, any variations to the definition of "business agent" that would

provide an exemption from the act must be prescribed by regulation. This is seen as an important safeguard, as regulations are disallowable by the Western Australian Parliament.

The proposed amendments will remove barriers to entry to the services carried out by business agents while increasing competition in this sector of the industry. The bill seeks to remove red tape while adhering to national competition policy principles as endorsed by the Council of Australian Governments. I commend the bill to the house.

Debate adjourned, on motion by **Dr S.C. Thomas**.