

Explanatory Memorandum

Real Estate and Business Agents Amendment Bill 2007

OVERVIEW

This Bill assists in delivering the State Government's commitment to remove red tape in relation to the licensing requirements for business agents, while increasing competition in the marketplace.

The Bill amends the *Real Estate and Business Agents Act 1978* to provide for the making of regulations that will allow persons or classes of persons that undertake the role of a business agent, to be excluded from the definition of a 'business agent'. This will effectively allow persons or entities, such as banks, to seek an exemption from the business agents' licensing regime. Any application for exemption would be considered on its merits and would include consideration of its effect on competition and the existence, or otherwise, of other regulatory controls.

In essence, business agents act in relation to the sale of a business. A 'business agent' is defined in the Act to mean a person whose business, either alone or as part of any other business, is to act as an agent for consideration in money in respect of a 'business transaction'. Under the Act a 'business transaction' means the sale, exchange or other disposal or acquisition of a business including any goods, chattels or other property as well as any share or interest in a business or goodwill.

Persons or entities excluded from the definition of 'business agent' would still require a licence under the Act if they wished to act as a real estate agent.

The proposed amendments in the Bill are modelled on similar powers to vary the application of legislation, such as exists in the *Travel Agents Act 1985*. The proposed amendments require variations to the definition of 'business agent' to be prescribed by regulation. This is seen as an important safeguard as regulations are disallowable by Parliament.

Clause 1 Short Title

Short title of the Act.

Clause 2 Commencement

Provides for the Act to come into operation on a day fixed by proclamation.

Clause 3 The Act amended

States that the amendments are to the *Real Estate and Business Agents Act 1978*.

Clause 4 Section 4 amended

This clause amends the definition of 'business agent' by providing for exclusions from the definition, of prescribed persons or classes of persons.

Clause 5 Section 145 amended

This clause inserts a new provision by which the Governor may make regulations that vary the definition of 'business agent' under section 4 of the Act, by excluding a person or class of persons from its meaning.