

Section 22 test looming

Section 22 of the *Land and Business Agents Act* is set to be tested in the very near future.

That section deals with exemption from the prescribed educational qualifications on the basis of suitable experience.

The problem with the legislation is that suitable experience is not defined, neither is an acceptable time period for experience (section 22(2)(a) refers to someone who has experience by virtue of being in the employ of "a person authorised to act as a Legal Practitioner who from time to time engages in the transfer of real property" or in the employ of a South Australian land broker or in the employ of a Western Australian settlement agent).

The Regulations to the Act came into force on 10 August.

Six notices of intention to apply for a Conveyancing Agent's Licence were published in the local paper in the two weeks following the introduction of the Regulations.

Some of those notices have been published by conveyancing clerks in law firms.

Given that there is no definition of suitable experience or an appropriate time span, a local real estate agent has suggested that applicants for exemption should sit an examination for which the pass mark should be set at between 75 and 90 per cent.

"It's no good making 50 per cent a pass mark," he said.

"That would mean that someone could have only half of the knowledge

required for conveyancing, and that could lead to disaster for purchasers and vendors."

At present, the Act is not looking like it will work the way it was intended.

For example, if a licence is granted on the basis of the undefined "suitable experience" and a conveyance goes wrong, the client could pay more because it is quite possible a solicitor will be needed to unravel the mess.

There is a further problem with section 22.

The Registrar-General, Robert Bradshaw, has written to the Society saying that the prescribed form of certificate (form 2A) was intended for completion by conveyancing solicitors in relation to a clerk's competence.

"Unfortunately, that form is being read by some applicants as if there is no necessity for employment by the certifier of the applicant," he said.

Mr Bradshaw said the effect of section 22(2)(a) is "to throw on to conveyancing lawyers a substantial responsibility concerning the provision of certificates in respect of whether or not particular applicants have reached the appropriate level of competence," he said.

For anyone who is confused about a creature

called the *Agents Licensing Act* and its relationship to the *Land and Business Agents Act*, the Society has been informed that they are the same thing; the *Agents Licensing Act* is the new and the *Land and Business Agents Act* is the old. However, Regulation No 41 of 1992 reads: "Regulations under the Agents Licensing Act." On the same page (the front), there is another heading: "Amendments of Land and Business Agents Regulations."

It would seem that the *Land and Business Agents Act* is somewhat of a mess and that the purpose for which it was created has the potential to be very quickly defeated.



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LEADING THE
REVOLUTION —

WHICH WAY
DID IT GO?

That amounts to the conveyancing agent's fee plus solicitors fees, plus the regular fees and duty associated with conveyancing.

Clearly, that is not the intention of the Act.

The Act is intended to *reduce* the cost of conveyancing and to *reduce* the need for parties to engage solicitors for conveyancing.

The Law Society has indicated that it will object to all applications for exemption from educational qualifications.

The first meeting of the Agents Licensing Board to hear applications for exemption is scheduled for the middle of the month.