

PROPERTY LAW (MORTGAGEE'S POWER OF SALE) AMENDMENT BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Hon Sally Talbot**, and read a first time.

Explanatory memorandum presented by the member.

Second Reading

HON SALLY TALBOT (South West) [2.12 pm]: I move —

That the bill be now read a second time.

The purpose of the bill I am introducing today is to protect the financial interests of people in the Western Australian community who find themselves unable to maintain the repayments on their home mortgages. As honourable members undoubtedly know from accounts they come across in their electorates, many homeowners are doing it tough at the moment as rates of unemployment, retrenchment and redundancy rise in the wake of the global economic downturn. When I read media reports suggesting that WA has been largely cushioned from the effects of the downturn, my thoughts turn to the growing number of people in our community who are suffering mortgage stress, which is crudely defined as occurring when more than 30 per cent of a person's net income is going towards meeting their mortgage repayments, or who have actually lost their homes because they could not afford to meet those repayments. By all accounts, these numbers are growing. The consumer protection division of the Department of Commerce reported recently that civilian property possession applications for the 12 months to June 2008 were submitted for 696 properties, compared with 453 properties for the previous year, an increase of 51.4 per cent. This is the sharpest increase since 2000-01.

According to *The Australian* online on 18 June 2008, the WA economic boom has led to a sharp rise in low-doc loans. I should explain that generally with a low-doc loan people are not required to provide any documentation, tax returns et cetera to substantiate their income; instead, they self-declare their income by completing an income declaration form. The article continued by saying that Moody's believes this to be a troubling phenomenon that may lead to inferior performance should the economic and property boom in WA unravel. On 25 November 2008 the Fitch report on bloomberg.com noted that the performance of mortgages in Western Australia appears to be deteriorating rapidly. The report titled "Fujitsu Anatomy of Australian Mortgage Stress: February 2009 Stress-O-Meter Update" estimated that 19.2 per cent of households in Western Australia would be suffering from mortgage stress by September 2009, an increase of 9.3 per cent on the February figure. According to a report on Friday, 24 April 2009 in our local newspaper, Fujitsu Consulting estimated that one in six Perth households could be struggling to meet their mortgage repayments by the end of the year. Areas particularly at risk include Byford, Joondanna, Yokine and Forrestfield, largely because these areas have a high proportion of low-income households and young families. Sadly, it appears that these warnings and reports are not exaggerating the problem. On Thursday, 2 July 2009, *The West Australian* ran an article on page 9 reporting "WA home repossessions soar". The chief executive officer of the Western Australian Council of Social Service, Sue Ash, was quoted in the article as saying that the published figures showing that home repossessions had tripled since 2006-07 were the tip of the iceberg in terms of the level of mortgage stress in the community.

The situation that these amendments to the Property Law Act 1969 address arises because of the potential difference in the interests of home loan providers and homeowners who cannot afford to service their housing loans. Clearly, the interests of homeowners whose homes are subject to forced sales are best served when the market value of the house is realised. The interests of the home loan provider, however, may be confined to recouping the amount of the loan. This latter figure may be substantially less than the market value of the property. The purpose of these amendments to the Property Law Act is to introduce a requirement for a mortgagee or chargee, in exercising a power of sale in respect of mortgaged or charged land, to take reasonable care to ensure that the land is sold for not less than its market value. Translating that purpose into more common parlance, the amendments will stop banks and other financial institutions from holding "fire sales" related to defaulted mortgages.

In March 2009 the New South Wales government announced that it would introduce legislation to prevent mortgage fire sales. Similar amendments were made to Queensland's Property Law Act 1974 last year. The amendments proposed in this bill to the WA Property Law Act mirror the amendments made to the relevant acts in New South Wales and Queensland. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.