

**ELECTRONIC CONVEYANCING BILL 2013**

*Second Reading*

Resumed from an earlier stage of the sitting.

**HON COL HOLT (South West — Parliamentary Secretary)** [5.06 pm] — in reply: I would like to thank all members for their contribution and support of the Electronic Conveyancing Bill 2013. I also thank the Standing Committee on Uniform Legislation and Statutes Review, which looked at the bill and came back with the one recommendation that the bill should pass, which is a good indication of the long evolution of this bill to the point we are at today. As members have noted, the bill came out of a Council of Australian Governments intergovernmental agreement to move from a system that probably relies too heavily on paper in which things can potentially go wrong when people transcribe details manually. I am pretty sure that has happened more regularly than we would like. This bill is about modernising a system to match our modern expectations about electronic transfers and working digitally in business. We have got to the end point of drafting this bill because of that COAG agreement and the hard work of both the minister and Landgate. I would like to thank all those involved for their contributions.

This is a non-controversial bill but it is very technical in nature. Most of the questions that have been asked by members are technical in nature. I will try my best to address them in my reply to the second reading debate but if that is not to the satisfaction of members, I am sure we can go into Committee of the Whole and address those issues when the relevant clauses are debated.

One of the issues raised relating to the purpose of the bill is fraudulent activity. Most people would be cautious about moving into a digital world with electronic transfers as there is the potential for increased fraudulent activity, or the risk is increased. Some members have already made suggestions in their speeches about how this might be addressed. The current system is paper based. This bill will enable transfers to occur electronically. We need to ensure that some clauses in the bill give us confidence in how that electronic system will work. One of the issues is verification of identity and ensuring that our systems are absolutely rigorous so there is no fraudulent activity. The electronic lodgement network, which is being built, is the framework that enables transfers to occur digitally. Only qualified and insured conveyancing industry practitioners and authorised deposit-taking institutions, such as banks, government agencies and departments, can be subscribers to the electronic lodgement network. It is not open to the general public. Only those organisations have access to it, and they have to prove their validity to gain access to it. That is one of the main mechanisms of ensuring no fraudulent activity. Subscribers must use a digital certificate that identifies the person signing under the private key issued for that digital certificate. Subscribers and an electronic lodgement network operator like National e-Conveyancing Development Ltd are required to implement these security measures.

Subscribers will be required to verify the identity of transacting parties and their authority to enter into a transaction before they sign any document. That includes sighting any relevant documentation. A certification that this has been done, and that that documentation is held, will be included in the electronic land registry documents. There will be a substantial penalty for providing false certification, with imprisonment for 10 years and a fine of \$100 000, and with a summary conviction penalty of imprisonment for three years and a fine of \$40 000. That will strengthen the rigour of the system by flagging the fact that there will be serious consequences for people who attempt to defraud the system.

Hon Sue Ellery asked about verification of identity for certain document types and quoted some incidents that have occurred in the past. Verification of identity for certain document types has been mandatory since 2 January 2013. My information is that that system has already captured, and stopped, some fraudulent activity. That is already recognised in the code of practice for settlement agents and real estate agents. The move to electronic conveying will strengthen the code of practice and help maintain that rigour. The documents that will require verification of identity are transfers, mortgages, applications for replacement or duplicate titles, survivorship applications and transmission applications. If verification of identity is not included in the application or attached to the document, the document will be rejected and not registered. Therefore, verification of identity will be strengthened through this electronic system.

**Hon Sue Ellery:** The language in the bill in respect of the new powers for the commissioner and the registrar is that they “may” do X, Y and Z.

**Hon COL HOLT:** I am coming to that. According to State Solicitor’s advice, the power to require verification of identity is currently implied within the bill. The reason the bill states “may” is that verification is not required for every document transfer; it is implied, but it is not necessary. Verification of identity is not required for memorials that are lodged by government agencies. However, for transfers, mortgages, applications for replacement or duplicate titles, and survivorship applications, it will be mandatory to provide verification of

identity. If the Leader of the Opposition needs more detail about that, I am happy to address that when we go into committee.

Hon Ken Travers asked whether the bill will capture non-Torrens titles. This bill deals only with Torrens-title land. The non-Torrens system is not captured and should not be affected by this bill. Clause 6(2) of the bill states —

The object of the *Electronic Conveyancing National Law* is to promote efficiency throughout Australia in property conveyancing by providing a common legal framework that —

...

(b) does not derogate from the fundamental principles of the Torrens system of land title as incorporated in the land titles legislation of each participating jurisdiction, such as indefeasibility of title.

However, the old non-Torrens title system is progressively being brought under the Transfer of Land Act.

**Hon Ken Travers:** But only if the owners of the property agree to it.

**Hon COL HOLT:** I am not sure about that, and if the member wants me to get more information for him on that, I am happy to do so.

Hon Ken Travers referred to the fact that 15.9 per cent of the private company will be owned by the Western Australian government. Even though that does not reflect our population, we need to remember that this company was developed by the four large states of Queensland, New South Wales, Victoria and Western Australia, which believed that we needed to invest in a common platform to make sure that electronic conveyancing would work across Australia. Some of the banks then said that they wanted to get involved in the company as well, and they also invested in it. Our level of investment of 15.9 per cent is a reflection of our initial investment, plus the investment that has come in from the banks. I do not think that was a targeted level. However, because we have quite a bit of skin in the game, we can have some input into ensuring how the framework is used and that it reflects our system in Western Australia.

Hon Ken Travers referred also to clause 30 in schedule 1, part 4 at page 130 of the bill. This clause will enable administrative tasks to take place notwithstanding that the legislation has not been passed. This clause is part of a standard set of clauses that is used for model national laws. This clause will give us the administrative flexibility that we require to get ready for the passage of this legislation.

**Hon Ken Travers:** So it will retrospectively approve those administrative acts?

**Hon COL HOLT:** Yes.

**Hon Ken Travers:** What will happen if we do not approve the bill?

**Hon COL HOLT:** Then I guess we will go back to square one.

Hon Darren West talked about fraudulent activity. I think I have addressed that issue. He talked also about changes to fees. There is no intention to change the fee structures at Landgate. In fact, this legislation should provide some efficiencies at the conveyancing, settlement agency and real estate agency end, and hopefully those savings will be passed on to the mechanism of land transfer. Hon Stephen Dawson talked also about the potential for fraudulent activity, and about how the bill provides the power for the commissioner to bring in people to give evidence. That relates to the fact that the operator of the common framework—namely PEXA, or Property Exchange Australia—will be involved in the transfer of land. If fraudulent activity occurs within that organisation, the commissioner will have the power to bring in those people to give evidence.

This is a pretty technical bill, with a large number of clauses. I commend the bill to the house.

Question put and passed.

Bill read a second time.

#### *Committee*

The Deputy Chair of Committees (Hon Amber-Jade Sanderson) in the chair; Hon Colin Holt (Parliamentary Secretary) in charge of the bill.

**Clauses 1 to 6A put and passed.**

**Clause 6: Purpose —**

**Hon KEN TRAVERS:** It is interesting drafting in that the Electronic Conveyancing Bill 2013 has clause 6A before clause 6. In response to my question, the parliamentary secretary indicated that pre-Torrens titles are not covered. I appreciate the parliamentary secretary's answer and I also appreciate him referring me to clause 6(2)(b), which states that this bill —

does not derogate from the fundamental principles of the Torrens system of land title ...

I do appreciate that; however, there are other two principles behind that, which I referred to in my comments—namely, the curtain principle and the indemnity principle.

**Hon Mark Lewis:** Refer to the trusty book.

**Hon KEN TRAVERS:** Yes, the trusty book, exactly. Can the parliamentary secretary confirm that neither of those principles will in any way be changed by this legislation?

**Hon COL HOLT:** No, they are not changed in any way.

**Hon KEN TRAVERS:** There is another thing I want to clarify because the parliamentary secretary made a comment that all old titles would be transferred across to the Torrens system. My understanding is that that is not a compulsory issue. If an individual wants to have the title transferred, they can apply to do so, or there may be circumstances in which a person may seek to have subdivision of the title or some other action undertaken at that person's request. At that point, if the person wants certain planning approvals, particularly if it is a waterfront property, there is a government requirement to get a title to cede the land. I want to make sure that there is nothing in this bill that will, directly or indirectly, put pressure on people or force those who have old titles to come across to the Torrens system.

**Hon COL HOLT:** There is no requirement in this bill to bring older system land titles under the Torrens system. People would have to make an application to do so. Also, this is not a mandatory way of transferring land; the old paper system will still be in action. If people still wish to trade in that way, they can.

**Hon KEN TRAVERS:** I appreciate the parliamentary secretary's comments. It is important to get these things on the record because often there are attempts to creep or to put pressure on these things. Many people who have old titles treasure them and in that sense do not want to give them up. I would be reluctant for this Parliament to go down the path of compulsory transfers or even putting pressure on people to do so, although I do accept that it is a different kettle of fish when someone makes a voluntary decision to change the use of their land.

**Clause put and passed.**

**Clauses 7A to 76 put and passed.**

**Clause 77: Section 180 replaced —**

**Hon SUE ELLERY:** I talked about this in my contribution to the second reading debate and I thank the parliamentary secretary for his response in his second reading reply, but I want this point made a bit clearer. The issue is that clause 77 introduces, in proposed sections 181A and 181B in particular, the verification of identity. The language of the bill is that “the Commissioner or Registrar may require”. Proposed sections 181A and 181B specify the things that the registrar or commissioner may require for documentation that verifies identity. In his second reading reply, the parliamentary secretary said, to paraphrase, that “may” is broader than just “may” and should be read as being implicit and that in certain transactions, the commissioner or registrar will do certain things, but in other transactions—the example given was if a government agency is the body conducting the transaction—they will not. I am not trying to be obtuse, but why is it deemed to be implicit? Why do we not just say that in certain transactions, this is what the commissioner or registrar will require?

**Hon COL HOLT:** The use of the word “may” allows the commissioner and the registrar some discretionary powers to interpret this part of the legislation. There will be a whole range of potential documents lodged that will not need a verification of identity. If we change the language to be more precise, as suggested by the Leader of the Opposition, all those documents that do not require a verification of identity would be captured under this part of the legislation. The use of the word “may” allows that discretionary power of the commissioner.

**Hon SUE ELLERY:** I would understand that if we were not operating in the context in which we know there have been real cases of identity fraud and in which there is a growing concern in the general community about identity fraud. This has nothing to do with conveyancing, but there were those cases of people driving through McDonald's, using their credit cards and debit cards and having their identity stolen. This is a live issue in the community. Why would we not go the extra step in the bill and make it clear that there is no discretion to be exercised on identity in particular, but perhaps for other purposes there is a discretion that can be exercised?

**Hon COL HOLT:** I understand what the honourable member is saying. The view is that those documents that absolutely need a verification of identity will be picked up in the regulations and exactly when the verification is needed will be spelt out. Not having those provisions in the legislation allows the flexibility for those other things to happen; otherwise if something happens in the future, we will have to come back to Parliament and change those provisions for the verification of identity for the documents we have to be super rigorous on. It is suggested they be in the regulations to allow that flexibility in the bill.

**Hon SUE ELLERY:** Can I confirm that it is intended that the regulations will set out the identification-linked provisions under which the commissioner or the registrar will not exercise discretion? If that is the case, what is the status of the regulations? Are they being drafted now or have they already been drafted?

**Hon COL HOLT:** The subsidiary legislation—the electronic conveyancing part of the regulations—is expected within two months. All those documents that require verification and identification will be identified in that subsidiary legislation.

**Hon SUE ELLERY:** I thank the parliamentary secretary for that. I think putting those provisions in the regulations rather than in the bill is less than satisfactory; nevertheless, the parliamentary secretary has answered my question, so I am done with that.

**Clause put and passed.**

**Clauses 78 to 95 put and passed.**

**Schedule 1 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by **Hon Col Holt (Parliamentary Secretary)**, and transmitted to the Assembly.