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

Second Reading

Resumed from 24 March.

HON WENDY DUNCAN (Mining and Pastoral — Parliamentary Secretary) [10.11 am]: On 24 March, when I last spoke on this bill, I put the Nationals’ position that we would not be supporting this bill. I remind members in the house that 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 the market value. I reiterate the Nationals’ position on this bill. We considered it at length back in 2009 when it first came up for consideration. Our view is that, while we certainly sympathise with the sentiments behind this legislation, we are not convinced that this bill will make any difference.

A mortgagee sale usually takes place in a market in which it is often very difficult to determine the actual market value of a property. As I said in March, I can speak from firsthand experience in this situation because my husband and I were in the process of purchasing a farm when, under Paul Keating, interest rates went to 23 per cent. That, of course, had an effect across the board, and there was no way that those who were under mortgage stress at the time were able to achieve a realistic value for their property when so many of them were on the market. This is, I guess, the crux of the issue here. While the intent of the bill is good, it will not really achieve what the honourable member is hoping.

The other issue that concerns us is the unintended consequences of legislation such as this whereby it may well make the banks less inclined to work with the mortgagee to resolve the situation. With those few remarks, the Nationals will not support this bill.

HON LINDA SAVAGE (East Metropolitan) [10.14 am]: I rise to support the Property Law (Mortgagee’s Power of Sale) Amendment Bill 2009. It is some months since this bill was debated so, to provide the policy context in which the bill has been introduced, I would like to begin by reading from Hon Sally Talbot’s second reading speech. In speaking to the bill Hon Sally Talbot said the following —

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.

I will read also into the record proposed section 59A of the bill, which is sought to be inserted into the act, because I think it very clearly and simply reflects the purpose of this bill. It reads —

59A. Duties of mortgagees and chargees in respect of sale price of land

(1) A mortgagee, in exercising a power of sale in respect of mortgaged land, must take reasonable care to ensure that the land is sold for —

(a) if the land has an ascertainable market value when it is sold — not less than its market value; or

(b) in any other case — the best price that may reasonably be obtained in the circumstances.

I think proposed section 59A is reasonable and it aims to provide statutory protection for people who are already facing what must be a heartbreaking situation, knowing that, due to any number of circumstances, they have not been able to keep up with their mortgage payments and the house will be subject to a forced sale.

Reading the debate in March, I noticed that there were a number of interjections. To be absolutely clear, I would like to say at the beginning that I do understand that this bill will not prevent someone from losing their home. That is not the intent of the bill. The bill has been introduced to protect people’s circumstances when they are facing that reality. As I said, I do understand it will not prevent someone from losing their home. However, it will ensure that when a person faces a forced sale, they have the protection of the amendment this bill seeks to insert into the act. It will create a statutory duty that requires the mortgagee to take reasonable care to ensure that
the mortgaged property is not sold for less than its market value or, alternatively, the best price is obtained that may be reasonably obtained in the circumstances.

As I understand it, under Australian law a mortgagee must act in good faith when exercising a power of sale. The question therefore arises: when a mortgagee exercises a power of sale in good faith, does that also extend to a duty to get the best price for the property or the market value? Looking at some of the decided cases, it is clear that a mortgagee cannot wholly disregard the interests of the owner or the mortgagor, act to their disadvantage or act recklessly. I think that it is well accepted on the authorities that the mortgagee is expected to take reasonable steps to obtain a fair price for the property. We would assume that hopefully they would do everything possible to ensure that they get that fair price. The Property Law (Mortgagee’s Power of Sale) Amendment Bill will enshrine that in legislation. The amendment in Hon Sally Talbot’s bill creates a statutory duty that will require the mortgagee or chargee to take that reasonable care to ensure that the mortgaged land is sold for not less than its market value. I think that the words “reasonable care” should be emphasised. In practice whilst it may be that the majority of mortgagees do take all reasonable steps to ensure that the property sale attains market value, this legislation ensures that someone will definitely have a valuation and that the property is maintained prior to going to sale. Small things such as the state of a garden and the tidiness of a house can make a difference to the sale price. With that enshrined in the Property Law Act, it will be made absolutely clear that that is required.

I say that in part because following the passing of similar legislation in another state I noticed that a major law firm, Clayton Utz, in a newsletter referred to the New South Wales amendments—which are virtually identical to those in this bill—and the changes that had been made. It states —

… the mortgagee, in exercising the power of sale, must take reasonable care to ensure that the land is sold for either:

- a. not less than its market value, if the property has an ascertainable market value; or
- b. the best price that may reasonably be obtained, if the property does not have an ascertainable market value.

Hon Sally Talbot mentioned in her second reading speech that other states had introduced legislation along these lines. In fact, the bill Hon Sally Talbot has introduced is almost identical, or very similar, to that legislation. In response to the New South Wales amendments, Clayton Utz stated in its newsletter —

While section 111A —

has not altered the position at common law concerning a mortgagee’s duty when exercising its power of sale, the duty is now enshrined in legislation. Mortgagees should ensure they obtain appropriate real estate and valuation advice regarding the property in order to comply with this legislative requirement.

I think that is saying, which is what I believe in speaking in support of this bill, that now the mortgagor will have that statutory protection and that the obligation of the mortgagee is enshrined in legislation and therefore provides a basis, which I will come to later, for those who are providing advice to provide that clearer advice. I expect that in cases in which perhaps there has been a failure to do what is reasonable to ensure market value is attained, perhaps the force of this amendment to the Property Law Act will improve things and ensure that that occurs.

The question is: Why are we speaking about this? Why has Hon Sally Talbot chosen to introduce, like other states have, a bill of this nature? I think that many members will have been following in the press some of the figures that are available about the level of mortgage stress in this state and in Australia generally. Looking particularly at WA, I will refer to a report that was in The Weekend West on the weekend just past, on 17 September. The article “Property market a tale of two cities” on page 18 states —

New information from the Reserve Bank shows more than one per cent of loans originated in 2008 in WA are more than 90 days late, well above the national average of just under 0.5 per cent.

Supreme Court figures show there were 357 home repossessions in the June quarter—or almost four a day. It was the highest since the March quarter 2009, and the second highest recorded.

Another very interesting article appeared in The Australian Financial Review on 18 June this year. The article titled “Who’s who on mortgage arrears map” on page 50 was about mortgage stress and listed those people who are most affected by mortgage stress. It makes for very interesting reading and perhaps some of it is not surprising. The group of people most affected by mortgage stress, truck drivers, was surprising in some ways to me. I think that many people will recognise the other people who are identified as most vulnerable to experiencing mortgage stress. The second most affected group are parenting payment recipients. As members all
find anything is that not a four-by-two. In fact, nearly all of them are four-by-twos. There is the occasional three-packages, as I did, which are very much advertised to young home buyers, they will see that it is very difficult to not the only builder I looked at, but I will use it as an example. If members look through the house and land I looked at the website of a very well-known home builder in Western Australia, Dale Alcock Homes. That was After I read Hon Phil Edman’s comment, I looked at what is being offered in the house-and-land package sector. I think the article that I just referred to, “Who’s who on mortgage arrears map”, paints a somewhat different picture from that. It seems to me that it paints a picture of females, which I interpret to perhaps mean sole parents, but certainly women with a number of children. After I read Hon Phil Edman’s comment, I looked at what is being offered in the house-and-land package sector. I looked at the website of a very well-known home builder in Western Australia, Dale Alcock Homes. That was not the only builder I looked at, but I will use it as an example. If members look through the house and land packages, as I did, which are very much advertised to young home buyers, they will see that it is very difficult to find anything is that not a four-by-two. In fact, nearly all of them are four-by-twos. There is the occasional three-by-two but I failed to find a single home that had only one bathroom. Hon Phil Edman said that the young generation all want a four-by-two home. I concede that some are either induced to or recklessly take on purchasing a home that they cannot afford to maintain payments for. However, I was a little concerned at his wholesale condemnation of the young generation. I think it is dangerous for members of Parliament to condemn any group with a wholesale generalisation, particularly given the poor image that politicians have. I am sure that I am not the only member who knows many people who belong to the young generation who are working extremely hard to save for a deposit and who do not fit into the category described by Hon Phil Edman. I will use this opportunity to recount something that happened when I attended a breakfast function last year and sat with the head boy and head girl from Cecil Andrews Senior High School in Armadale. After we talked generally for some time, I asked both of them if they could tell me what the issue was that most concerned them. I was quite taken aback by the answer from the head boy. He was a young man who obviously had leadership qualities, because he was the head boy, and he was aspiring to study IT at either university or TAFE. He told me that his greatest concern was that he would never be able to afford to move out of home and that he would struggle to find a deposit. He said that between the cost of living and the cost of housing and watching the difficulties that his brother had had, he worried that he would not be able to afford a home. I think that he is just as representative of the young generation, along with a lot of the other hardworking members of the young generation, as are those characterised by Hon Phil Edman who want a four-by-two home, two Commodores and two plasma screens. They are not happy to start off with a three-by-one. They want the works straightaway. I think the article that I just referred to, “Who’s who on mortgage arrears map”, paints a somewhat different picture from that. It seems to me that it paints a picture of females, which I interpret to perhaps mean sole parents, but certainly women with a number of children. I will use this opportunity to recount something that happened when I attended a breakfast function last year and sat with the head boy and head girl from Cecil Andrews Senior High School in Armadale. After we talked generally for some time, I asked both of them if they could tell me what the issue was that most concerned them. I was quite taken aback by the answer from the head boy. He was a young man who obviously had leadership qualities, because he was the head boy, and he was aspiring to study IT at either university or TAFE. He told me that his greatest concern was that he would never be able to afford to move out of home and that he would struggle to find a deposit. He said that between the cost of living and the cost of housing and watching the difficulties that his brother had had, he worried that he would not be able to afford a home. I think that he is just as representative of the young generation, along with a lot of the other hardworking members of the young generation, as are those characterised by Hon Phil Edman who want a four-by-two home, two Commodores and two plasma screen televisions. Because I have spoken about that, it gives me an opportunity to raise another issue that concerns me that perhaps other members have also noted. I am referring to the reintroduction of low-deposit home loans. Some members will have read an article in The West Australian on 17 August 2011 that reported that Bankwest has unveiled a new product allowing first home buyers to borrow 97 per cent of the value of a home, instead of the traditional 80 per cent. I have some concerns about someone being able to borrow that amount of money instead of doing what we have normally expected people in this country to do, which is to put up a fairly substantial amount of the deposit. This issue was raised with the government. I will read an article from 16 August 2011 in WA the West Australian on 17 August 2011 that reported that Bankwest has unveiled a new product allowing first home buyers to borrow 97 per cent of the value of a home, instead of the traditional 80 per cent. I have some concerns about someone being able to borrow that amount of money instead of doing what we have normally expected people in this country to do, which is to put up a fairly substantial amount of the deposit. This issue was raised with the government. I will read an article from 16 August 2011 in WA in which the Minister for Housing, Troy Buswell, said that he was confident that the new low-cost home loans would not put the state on the same path as the subprime mortgages in the United States. The minister was reported to have said —

“Home ownership is a great aspiration we need to keep alive in our state, especially for young West Australians,”

The article also stated —

Mr Buswell brushed aside concerns the new low deposit home loan could bring in first home buyers who will possibly struggle to meet the mortgage repayments.
I will follow that up because although I do not think that the young generation expects to have it all, all of us will be tempted to respond when we are given the opportunity of homeownership. As the Minister for Housing says, that is something everyone aspires to. When young people are not even required to put down a 20 per cent deposit, there is a real danger that they could experience mortgage stress. Let us not be quick to judge when banks are making available funds to borrow while expecting the customer to have such a little deposit and therefore limited savings history.

When Hon Sally Talbot spoke about the Property Law (Mortgagee’s Power of Sale) Amendment Bill 2009, she referred to New South Wales and Queensland. I have read the Hansard debates on the matter of both states. In particular, I read the debate in the New South Wales Parliament when it was considering the Real Property and Conveyancing Legislation Amendment Bill 2009, which is virtually identical to the amendments for which Hon Sally Talbot is seeking support. The debate makes very interesting reading, particularly because of the bipartisan support for the bill, which was introduced by a Labor minister at the time. The opposition, in its response, said that it would not oppose the amendments and referred to the history of previous governments that had looked at introducing similar amendments. It is striking when reading the debate on the bill that the tenor of the debate was so focused on the very group that would be the beneficiaries of having this duty enshrined in statute. I suggest that members who are interested in the matter should read that.

Having read out earlier the list of people who have been identified as suffering mortgage stress, I think members can see how it melds together. Those who are suffering mortgage stress are very likely to be those who are on a low income and who are facing a range of issues that have put them in that situation. Although I accept that some people have been reckless and extravagant or have wanted it all, we could say that other people, regardless of their financial circumstances, can be guilty of doing the same thing. The list showed primarily that the people who are suffering the type of mortgage stress that was reported in the article are those who do not fit into the category of the overtly extravagant people who wanted it all and have been reckless with the good fortune they had that enabled them to buy a home. As I said, the land and home packages that I referred to, which are being promoted by organisations such as Dale Alcock Homes, cost between $300 000 and $400 000. They could hardly be described as being aimed at people who have money to throw around. I think the average cost of a home in Perth now is around $470 000, having decreased somewhat in the last two years. The houses that I was referring to are substantially below the cost of an average property. As I said, it was interesting to see the bipartisanship in that NSW debate, including from Hon Fred Nile. The support went across all political parties when the legislation was introduced in New South Wales.

An issue raised by Hon Michael Mischin was in the form of the question: how is it going to work? I am going to try to respond to that. The interjection obviously was very brief so I am not entirely sure what he meant, but I am going to say why I think it would work.

**Hon Michael Mischin:** I asked: How will it work? How do you intend it to work to relieve mortgage stress?

**Hon LINDA SAVAGE:** No, you asked: how is it going to work? I just said that. I then said, “Now I am going to say why I think it is going to work.” I have already said that at the heart of the bill is the enshrining of good faith as a requirement in the Property Law Act, rather than us just hoping that a mortgagee will make every effort to get market value. I referred to the advice that had been given, and I think that was good advice, by the law firm Clayton Utz. There is quite a bit of authority on good faith with regard to cases of forced sales. “Good faith” is a term that lawyers might understand, but I do not think it would be so easily understood by the wider community. Given that the group of people for whom this bill is seeking to provide further protection is unlikely to be reading those authorities, and I assume in many cases would be unable to afford a private lawyer, I think that by amending the Property Law Act we will make it more easily and widely known that market value is something that needs to be obtained for a sale under these circumstances. That is qualified with the words “reasonable care”. As Hon Wendy Duncan has said, market value can sometimes be difficult to ascertain. I think she referred to a farming property. There is no doubt that for certain properties, particularly farming properties and very unusual properties, it would be difficult to obtain a market value, but I can assure members that obtaining a valuation is a very standard procedure in many legal transactions and in many family situations. In fact, most people who insure their house will get some sort of valuation done.

**Hon Michael Mischin:** Do banks sell houses without getting a valuation?

**Hon LINDA SAVAGE:** What I am saying is that obtaining a valuation for a home is quite standard practice.

**Hon Max Trenorden:** As an ex-insurance agent, I can tell you that it is not very reliable.

**Hon LINDA SAVAGE:** Mr President, I cannot hear what Hon Michael Mischin is saying.

**Hon Max Trenorden:** It was Max Trenorden!

**Hon LINDA SAVAGE:** I am not taking his interjections. Mr President, I ask that you request that the member either seek leave to or ask whether he can make an interjection; or not interject.
The PRESIDENT: Order! All members know what the rules are. In principle, there are to be no interjections, but I recall the member on her feet actually referring to an interjection made previously by a member. You reap what you sow in this place. If you invite an interjection and make a comment on it, you cannot say that you do not want any interjections at all. But I take the member’s point: you are on your feet making your speech and you are entitled to be heard without interruption.

Hon LINDA SAVAGE: Mr President, I certainly would not like to question your wisdom. I think what I did was to refer to an interjection which had been made and which asked how the bill is going to work. I think we might have to agree to differ. I did not think that I was inviting interjections by doing that, but I will take your advice and, in future, if I ever refer to an interjection or quote one, I will know that that is to be considered an invitation for that member to interject.

I will go back to where I was. Obtaining a market value for a property is quite standard. Anyone who has ever sold a property or sought to get insurance for their property, or has perhaps been in a family situation, such as a break-up, might have required a valuation and will know that this is quite commonplace. This bill will ensure that this is something a mortgagee must do before a property is sold, and that they must therefore take reasonable care that the price that is obtained reflects that. What I think I was saying before was that good faith is a term that might be understood by lawyers but it is not a term that most laypeople would understand. The authority on this issue requires either a lawyer or someone who has the time to read through the decisions to understand what it would mean in each particular situation. The type of people who are usually facing a forced sale are not people who are going to go to a lawyer. In my experience, they would go to a community legal service, the Tenants Advice Service or the Citizens Advice Bureau to get advice. In my opinion, this amendment of the Property Law Act will enable the people who give that advice to say that the person who is now able to force the sale of the home must take reasonable care to ensure that if the land has an ascertainable market value, it is not sold for less than its market value or, in any other case, that they get the best price that may be reasonably obtained in the circumstances. I think that most members of the public, understanding as they would what market value means, would not only be reassured by that but also feel confident that they could ask the bank whether it has had their property valued, or, if they notice that their property is being let go to rack and ruin, how this will ensure that somewhere near the market value is obtained. I know that the brochures and posters produced by community legal services and the Citizens Advice Bureau often use a few key words to help people understand their legal rights. “Market value” is a term that I think laypeople and people in these circumstances would understand, in a way that they would not understand the term “good faith”. In answer to the question—how is it going to work—I am confident that on a practical level, on the ground when these circumstances arise, that is the sort of thing that actually makes a difference in practice. From my experience with clients or when giving pro bono advice, I know that it can be quite difficult to explain that the mortgagee would have to exercise good faith and to then go into a more detailed explanation of that. Members may say that by and large banks do go through this process. As I said earlier, I accept not only on Australian authority, but also in practice that the reckless disregard for or acting to the disadvantage of a property owner is not common practice and is not acceptable. However, having the words “market value” in the bill makes it much easier for someone to understand that they have that protection at law, and they will.

I look forward to hearing the comments of other members on this bill and whether they think that it will, rather than enhance protection, in some way diminish protection. Alternatively, if members say that the bill will make no difference, I cannot see why they would not support it anyway, knowing that some of us think it will make a difference. Other states have obviously decided that such a bill will make a difference. Those members who think that there is no value in the bill might like to consider supporting the bill for some of the reasons I have suggested, even though they may think it will make no difference. I look forward, as I said, to hearing whether any member believes that not only will it make no difference, but also it will not in their opinion provide the benefits that Hon Sally Talbot outlined in her second reading speech and to which a number of other speakers and I have also pointed.

HON MAX TRENORDEN (Agricultural) [10.52 am]: I was not intending to speak on this Property Law (Mortgagee’s Power of Sale) Amendment Bill 2009, but I have been encouraged by Hon Linda Savage to buy into the argument. The first thing I have to say to Hon Sally Talbot is that I commend her for her attempt at drafting this bill. I totally agree with where she is trying to go with this bill. I have large personal problems with liquidators, who are not referred to in the bill, and the effect of liquidation on private homes. People going into small businesses are often affected by liquidators effectively taking over the chequebook of their troubled enterprise, and very often by the time the liquidator is finished, there is nothing left in the business. Unfortunately for many people, there is very often nothing left in the value of their house either and they hit the wall! I therefore believe that there is a bigger question about how we view liquidation than the question raised in this bill.
However, what concerns me in reading the honourable member’s bill is the reference to “market value” in proposed section 59A(1)(a). I do a lot of reading—one of my great pleasures is reading—and many of the very prominent economists commenting on the western world in publications such as The Economist are constantly saying that the property market in Australia is 50 per cent over value. If we say “market value”, we are talking about a market; and if we are talking about a market, we are talking about a world market. Therefore, very prominent people, whom much of the western world listens to, are saying our market is in for a tough time into the future.

Today’s newspapers, which I took the time to read today, state that the expected growth in the United States property market in the next 10 years is 1.5 per cent. Today’s papers indicate that the Reserve Bank of Australia has clearly ruled out a reduction in interest rates, which will immediately affect the market. Today’s papers and other publications of recent times state that firms such as David Jones, Myer and quite a few other discretionary retailers are sound asleep at the wheel. David Jones is saying in today’s press and said in yesterday’s press that all it has to do is sit out this period and the usual market conditions will return. There are plenty economists saying to people such as the CEO of David Jones, “You’re asleep. The world’s changed. Don’t expect pre-crash conditions to come back, because the likelihood is that they’re not going to come back.” The reality is that Australians are saving like they have never saved before, and there is no indication that that is going to change. What does that mean for this bill? I will tell members what that means for this bill.

I spend a bit of time on a property I own in Mandurah. Hon Nigel Hallett and I are great supporters of Peel Thunder. I am wearing the Peel Thunder tie today. I go down south to Mandurah quite a bit. Frankly, the reason I assist Peel Thunder is that it is a regional football team and it covers an area that extends partly into my electorate.

Hon Michael Mischin: It’s certainly an unusual tie!

Hon MAX TRENORDEN: Now that I have had an interjection, I will speak to the interjection. There was a time in the Legislative Assembly when we had bad-tie Thursdays. It was a standard event.

Hon Simon O’Brien: Now it’s every day of the week.

Hon MAX TRENORDEN: Yes. I’m trying to keep the Minister for Finance out of the debate.

Hon Michael Mischin: You’ve maintained the tradition in here!

Hon MAX TRENORDEN: Yes, I am trying to uphold a tradition here; it is very important.

We had to can the event. The prize every Thursday was a bottle of wine. It was a sexist, male-only event, although we did not say that women could not wear a tie. However, the event got to the stage that it was rigged! It was appalling! The person who rigged it was the then member for Esperance. He had an ageing aunt who had little to do and she used to make his ties. He would appear with the most appalling ties and win every Thursday! So, we had to cease the practice because we just could not match the competition! That is what I am trying to get back to here—competition!

The PRESIDENT: Look, this is fascinating but I am trying to get that link that the member is talking about back to the bill.

Hon MAX TRENORDEN: I just got back to the point, Mr President!

Let us look at Mandurah and Dunsborough. Hon Nigel Hallett and I were at a table at a football event discussing matters around Mandurah. One of the people there said that a person he knew had a property on the market for $2.8 million. It sold for $1.3 million. That person had bought it at $2.6 million. Where is the measure? Where is the market?

I occasionally read publications about Dunsborough, which is a very popular spot. The price of real estate in Dunsborough has almost halved in two years. Let us look at the Town of Northam; real estate has almost maintained its price. Therefore, describe to me the market. Let us look at the waitlist for Homeswest; 20 000 people are listed for state homes. Part of the reason that 20 000 are on that list is they want to get out of the real estate market. They want to get into the security of a state home. That cannot be denied. A big chunk of those 20 000 people do not want to be in the first-home-buyer run. They want the certainty of a state-controlled rent and a state-controlled quality house, and we cannot blame them.

Hon Helen Bullock: Who said that? Where’s your evidence for saying that?

Hon MAX TRENORDEN: All the member has to do is go and look at the agency records. Go and do a bit of research.

Hon Helen Bullock: Which records provide that?
Hon MAX TRENORDEN: I know that the member has not been a member of this place very long but there is actually a state agency. It has an internet site and the member can go and read it. I should not have to teach her that.

Hon Helen Bullock: How arrogant you are!

Hon MAX TRENORDEN: That was a pretty ignorant comment by the member. She has the capacity to do her own research.

When I was an insurance agent, which was a long time ago, about 80 per cent of people did not properly insure their houses. But that is still true now from my understanding of the comments about those processes by Hon Linda Savage. There used to be an insurance process called “averaging”, because people did not insure their houses for the proper amount. If a person’s house was worth $1 million and they insured it for $800 000, the averaging process meant that because the house was insured for 80 per cent of its value, the insurance company would pay the person 80 per cent of the amount it was insured for. That stopped happening, but I think that was a reasonable activity by insurance companies. Because people insured their property for 80 per cent of its value, they took less risk than the insurance company took. The vast majority of the claims on the house would have been less than the full value of the insurance. The insurance company took more risk than those people took.

Again, that was part of the market.

Many of the issues that we are talking about now are the result of boom buying—people getting carried away in a market and buying at inappropriate prices. That has happened since Methuselah was a boy. I recall reading in the United Kingdom about the tulip boom and bust. When tulips were first brought into Holland, everyone bought into them and substantially lost money. There is nothing new about that. I am not trying to denigrate what the honourable member has said; I just have a different view. How do we define a market under proposed section 59A in the bill? To repeat myself: I believe in what Hon Sally Talbot is trying to do, but my argument is that I cannot see how it can work in practicality. I spent a bit of time in this market value game. It is not a guaranteed process for the vast majority of people when they seek to sell their houses or want to know what their houses are worth because they want to use them as collateral at the bank for whatever reason, which I and nearly everyone else in this house have done. There is no legal standing for those valuations. Even if they have paid valuers hundreds and hundreds of dollars for those valuations, which people do, those valuations are absolutely meaningless on the street on the day of the auction. The vast majority of valuations are done by real estate agents, many of whom are my friends. But I say to them, and I have said to them privately, that they play their own game. They often inflate these valuations for their own purposes, not for the purposes of either the bank, which wants a realistic valuation, or the individual, who wants to know where they will stand if the worst happens in the circumstances for which they are trying to raise a mortgage, whether that be for housing, business or whatever.

Given what we understand the market to be—I do not prescribe the market; the world prescribes the market—when the factors are considered, many prominent people think that Australian real estate is 50 per cent overvalued. I was in the United States in November last year. The mortgages of one-third of all mortgage holders in the United States are higher than the proposed value of their properties. If that was the legal situation, they would be instantly foreclosed on. The Reserve Bank is reported in today’s paper as arguing strongly that in all probability a worldwide hiccup is coming, but the Australian economy will hold up, so there is no reason to reduce the interest rate. That is a clear market signal. Although Hon Sally Talbot is saying that land has an ascertainable market value, I do not think there is any such thing as an ascertainable market value.

HON JON FORD (Mining and Pastoral) [11.05 am]: It was interesting to listen to Hon Max Trenorden. What I heard was argument to support the Property Law (Mortgagee’s Power of Sale) Amendment Bill 2009, not oppose it.

Hon Max Trenorden: I knew I was confused!

Hon JON FORD: I think the member is confused. He is a good bloke. He talks like a socialist, so he should probably be sitting over here with me. We tried, but he knocked us back!

I think Hon Max Trenorden seemed to be arguing that we should not interfere in the market because the market sets these things.

Hon Max Trenorden: What I was trying to argue is that it is very hard to define a market.

Hon JON FORD: The Nationals and Labor—in fact, everybody in this house—support market intervention. It is called royalties for regions. We especially interfere in markets and valuations that, by any measure, should not get a jumper, but we do that because we are concerned about communities and the individuals in those areas. This bill is about protecting vulnerable people. As members can tell, I support the bill.
A little bit has been said about how to determine the market value of a property. Every day in this country market values are set in courts. They are set in the Family Court, in commercial dealings and disputes, when businesses fail or are broken up, when there are successful mergers and when successful businesses buy other businesses. It is not a hard thing. A provision in the bill deals with that matter and provides a test with a set bar. It states —

(b) in any other case — the best price that may reasonably be obtained in the circumstances.

We have to look at what we are trying to do. We are trying to support people who find themselves in real stress and in a position of no power. I am bemused by the free marketeers. I was watching on television the other night a business proponent in the United States who was demanding that western countries intervene and remove regulation because putting in place regulation impediments was causing the second dip recession. He was also saying that the government has to act responsibly. We have not even got out of the first dip and he has already forgotten the reasons for it—that is, a total market failure. The banking institutions and the failures of the regulatory bodies left all those people exposed. Who copped it in the neck? It was not the financial institutions or the markets; they were bailed out by the taxpayer. Who pays? The general Joe and Josephine Bloggs out in the community. They are the ones who lose their jobs, their security and their homes. They are the ones whose families break up because of their exposure to stress. What we see day in, day out is people marching in the streets, particularly in Europe, not because they do not accept collective responsibility but because they do not see any equity in government response around the world to the failure in this market. They still see people driving the big limos and receiving huge salaries while they are losing their jobs, their superannuation and their health care.

Who actually suffers from mortgage stress? It does not have to be some person who has been led by the nose or a greedy person who has thrown themselves into a position that they do not understand. There is a level of trust and power. When I was a minister I went into the bank to remortgage my home and was told by my mortgage broker I could borrow a ridiculous amount of money. It was up around $8 million! It was about that much; it was a crazy sum. I am not going to accept that, but in my mind I think I can afford this. The simple fact is that if I fall over trying to make the repayments on my mortgage, no matter what the market price is at the time, the institutes that I owe money to just want to recover the money they have lent. That is what they are trying to do—recover their money. They are not interested in me. They do not care how much money I get out of it, they just want to get the property off their books and get the cash so they can reinvest it in another person who will pay them interest, and they get a return on that money. This bill seeks to bring the mortgagee, the person who is under stress, back into the game. I do not think it is in the economy’s interest to have a bunch of people broke, with no money to reinvest. In the end we want those people to re-engage in the market and be able to learn from their mistakes or recover from their misfortune and get back into the market. We know it. Do not tell me that members in this house do not know somebody in their family, or do not have constituents, in circumstances in which it is blindingly obvious they have had their house ripped out from underneath them and sold and there is no money left. In fact, a lot of them end up with other debts such as those from credit cards. The bank gets its money. Those people are made bankrupt and they have no money left to pay off other debts such as credit card debts, car loans and the like. Those people are ruined. A person remains a bankrupt for a period of five years before they can borrow again. That person’s credit rating is wrecked for life. If the house was sold at a proper level, at the market rate or an agreed rate, the bank could get its money. Those people would be able to pay off most of, or at least manage, those debts and stay in the market. That is what this bill tries to do. It is about protecting people.

I reject the arguments that I have heard for why we should not do it and it will not work. I tell members: nobody is going to criticise this house for having a go. As a market signal, if we pass this bill through this house, the banks will think twice about getting some poor person in there who should never have got a loan in the first place. Somebody comes in and says, “I want to buy this $350 000 house and I want to borrow $345 000 of it.” The bank asks, “How much money are you on?” The reply is, “I’m on $45 000 a year.” The bank says, “No problem, here’s the dough.” That has been happening for years. That is what is happening around the world. If banks and lending institutions realise that in the end it will not be the case that they can just sell a house from underneath somebody for way less than the market price—because that is what they do—they will think twice about it. We regard people in banks and lending institutions as responsible people. I put it to members that they are not. The evidence is right around the world at the moment—they are not responsible people. All they are interested in is making a quick buck. Some of them are only interested in making a quick buck or a decent dollar for their investments. It seems it is for personal gain. We have seen evidence of very, very wealthy people around the world. People have found themselves in front of star chambers, Senate inquiries and courts. There are other people who prey on those people who find themselves in that situation. They do deals on the market. They deliberately lower the market price and buy them out because they see an investment opportunity. They buy them out cheaply, and within months—sometimes a year or so, but usually within months—they resell the property and make a profit, and usually at the market price.
I remember as a very young man in the Air Force at about 20 years of age, which seems a terrible long time ago, I went to my father to ask him whether I should invest in a certain type of investment. He said, “No. That type of investment is not in housing, it is in people preying on people’s misfortune. It is perfectly legal—taking over their mortgage payments, selling the properties and making a capital gain. Don’t go anywhere near it because it’s immoral.” That was my father years ago. Nothing has changed. We ask the house to consider that, in supporting this bill, we will provide reasonable protection to people. We are sending a market signal to the banks that we do not want them ripping off ordinary Western Australians. That is what this bill is about.

I go back to people who find themselves in that situation. I was doorknocking in Karratha a few months back. I might have already told this story to the house, but members will have to cop it again! I came across a house. It is always interesting doorknocking outside the election cycle. When people discover you are not a Jehovah’s Witness, they sort of go, “Phew!” Then when you say you are the local member of Parliament, they ask, “Is there an election on?” You answer no and they say, “Phew! What are you doing here?” “I actually want to know what’s going on in your lives. Here’s my card; if I can help you with anything, let me know.” A woman thanked me very much. She said, “No, no, I’ve got nothing to tell you about.” I started walking out the driveway and she called me back. She said, “Jon, I do have something to tell you.” She told me this story. This was a house that had all the trappings of wealth. A typical Karratha house—it had a caravan, a big boat, a four-wheel drive vehicle and another small four-wheel drive. The big four-wheel drive was an old one, obviously kept to tow the boat. It was a nice company house. They did not have any mortgage stress from the company house. She told me a story about how they had all these investment properties. Yes, they had pushed themselves a little bit. Then the market collapsed. Before the market collapsed she could afford to stay home and look after the kids, and work part time. Her husband has a good job and they were paying off the mortgages. The result of an interest rate rise and a drop in the market meant they could not get rid of their assets to try to compensate for the stress they were feeling from the interest rates. Because the market had dropped right off, they had not been able to sell their homes for months. The result was that she was now working full time, and her children, because she could not look after her very small children, were living with their grandparents in Perth. She said to me, “I can’t live like this for much longer. But maybe it’ll resolve itself because if interest rates go up, we’ll be stuffed and will just go bankrupt. I’m thinking that we should just go bankrupt anyway because I don’t see my husband now, and I don’t see my children, so I would rather be broke and living with my family.” These people are average Western Australians and, by every observation, they are responsible people with lots of assets but they are also carrying a lot of debt. What I would not like to see in that case is the banks selling those people’s assets at a fire sale price whereby they then lose everything, which is what Hon Sally Talbot is trying to avoid with this bill.

**Hon Michael Mischin**: Have they tried to sell any of the properties themselves?

**Hon JON FORD**: That is what I said; they have tried to sell the properties, but because the market has dropped off and it is a buyer’s market —

**Hon Michael Mischin** interjected.

**Hon JON FORD**: Just listen to what I am saying; I am not going to repeat myself.

**Hon Michael Mischin**: How will this help them if not even they can sell their property at market value?

**Hon JON FORD**: Because if they “fall over”, their lives will be wrecked.

**Hon Michael Mischin**: Yes, but how will this give them better value for the properties they can’t sell now?

**Hon JON FORD**: It will stop them from being ripped off by people who want to exploit them.

**Hon Michael Mischin** interjected.

**Hon JON FORD**: The member might laugh.

**Hon Michael Mischin**: They can’t sell it themselves in a free market, and the bank is ripping them off!

**Hon JON FORD**: I have never met a more arrogant person in my life than that member of Parliament sitting over there.

**Hon Michael Mischin**: I haven’t heard anyone more illogical.

**Hon JON FORD**: If I were not forced to use the word honourable, I would not actually use it.

**Hon Michael Mischin**: Ohhhh! Tsk, tsk!

**The DEPUTY PRESIDENT (Hon Col Holt)**: Order members! If Hon Jon Ford directs his debate towards the Chair that will be the best outcome for the house.

**Hon JON FORD**: Most people are aware that I am a person with a fairly even temper.
Hon Wendy Duncan; Hon Linda Savage; Hon Max Trenorden; Hon Jon Ford; Hon Adele Farina

What we cannot afford to do is say that we cannot do something. We will never know whether the legislation works unless we give it a go. We have to send a message to the market and to the financial institutions that something needs to be done, that we care about what is being done and that we care about the people we are here to serve. That is what we have to do.

In preparing for my contribution I have read other members’ speeches, and I have not heard in any of the arguments from anyone on the other side of the house an alternative; not an amendment —

Hon Adele Farina: They’re not interested; they don’t care.

Hon JON FORD: That is exactly right. It appears that way, but I do not think that is the case, because in their contributions, Hon Wendy Duncan and Hon Max Trenorden indicated their support for the concept, but they did not offer an alternative.

Hon Adele Farina: Two exceptions.

Hon JON FORD: I know it is hard when bills come into the house and there is a short amount of time in our busy lives to look at them. I see that there is recognition of the issue. But, for crying out loud, if the house is going to vote down the bill, a bill that in Hon Max Trenorden’s words has honourable intentions, let us argue about some alternatives. What can we do in place of this? There seems to be an agreement among some members in this house—perhaps even a majority—that it is something that needs to be addressed or is at least of serious concern for Western Australians. But let us hear an alternative.

An example of what happens, if we look at the worldwide economy, are the recent arguments and stalemate between the Democrats and the Republicans in America which are now being held responsible by commentators for a potential second-dip recession. I do not know whether that is right or wrong, but enough people are saying it is a problem, including the head of the International Monetary Fund. People say, “We want to do this to fix it”; and others say, “No, that’s wrong and you’re not doing it.” So there is a conundrum in which the market is saying, “Please do something; anything will do.” And regulators are saying, “We won’t do it.” Australia might not be a major player in the global economy, but we are certainly significant contributors to the world economy. But in our own world, in Western Australia, we have a responsibility to ensure that the interests of the broader Western Australian community are looked after. I am quite happy to accept the argument that this bill is the wrong way to go if a legitimate alternative is put up—a legitimate alternative. But we have not heard any of that. All we have heard is nay-sayers and no. I will look with interest to see what can be offered from the members of the government and the National Party as alternatives to protect Western Australians from this slide; from the chance of exploitation, something that we know actually occurs. We know it occurs. There is enough smoke around this and enough personal experiences among people in this chamber to indicate that it occurs. But members should not just sit there and say no. It is ridiculous to argue that somehow a bill should not be supported because a market value cannot be defined, when it is defined every single day either in the family law courts or in commercial arrangements.

I ask members to support this bill and, with its passage, to support Western Australians. It is a bill that we should support because it is the right thing to do. We have debates about power and balance usually regarding industrial relations, but in this case we are talking about large financial institutions that are in very strong positions of power over people who act on their advice. When people apply for a loan and the bank says, “Yes, we’ll lend you the money”, it is reasonable then, in my view, that on getting the advice—“We’ll give you the money”—most people take that as advice that they can afford the loan. But we know that, in lots of cases right around the world, not just in Western Australia, that is not the case. Having made those comments, I urge the house to support the bill.

HON ADELE FARINA (South West) [11.27 am]: I am pleased to support the Property Law (Mortgagee’s Power of Sale) Amendment Bill 2009 introduced by Hon Sally Talbot. I have a hard act to follow because nobody could have put a case as eloquently as Hon Jon Ford in support of this bill.

Over the past couple of years, I have spent a lot of time talking to financial counsellors in the South West Region because of the numerous representations I have been getting from my constituents about the financial stress they are suffering as a result of the huge increase in household costs imposed by this government, together with a range of other pressures that are creating great financial stress for them. I have spent a lot of time speaking to local financial counsellors in the south west to try to ascertain the degree of the problem and the avenues available for assistance. One of the things they have said to me repeatedly deals precisely with this situation, and that is when people have taken out a mortgage that they either cannot service or can barely service in good financial circumstances, but with the increase in household costs now find themselves in a position in which they can no longer service the mortgage. In some cases they have maxed their credit cards to the limit in an effort to continue making their mortgage repayments. Then they find that they have hit the wall and they cannot continue; their credit cards are maxed out, they cannot make their repayments and they cannot borrow any more money.
from family and friends, so they have to let the property go. In many of those circumstances not only is the house sold at a price equal to the actual mortgage that is left to be repaid, because as Hon Jon Ford said, the banks are interested only in getting a return for the money they have outlaid, but the home owners also have to pay off their credit cards, which they have maxed to the limit. In some circumstances the properties have sold for less than the amount of the mortgage that was taken out, so these people have no home, their credit cards are maxed to the limit and they still owe the bank money because the property sold for less than the value of the mortgage. These people are in a totally unenviable situation; they are struggling, they are frequently on very basic salaries with little capacity to improve their earnings, they have massive debt and they are also in the situation in which they cannot afford to rent premises either, particularly in the South West, where the rents are very high, particularly in Bunbury. There are few rental properties in Bunbury and fewer with low-priced rent.

Hon Helen Bullock interjected.

Hon ADELE FARINA: Yes, of course, they do.

The Property Law (Mortgagee’s Power of Sale) Amendment Bill tries to address a very serious problem. I ask members to consider what Hon Jon Ford said in that if they do not think what has been proposed will work, what do they offer as an alternative? This is not an imagined problem; it is very real and more and more individuals and families are finding themselves in this position.

Debate adjourned, pursuant to temporary orders.