

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

Second Reading

Resumed from an earlier stage of the sitting.

HON SALLY TALBOT (South West) [11.30 am] — in reply: As I was just saying, the basic principle of the veil of ignorance is that the people making the decisions do not know the place they will end up in society. The obvious reason that works as a device is that those people will, presumably, design laws and systems that would not disadvantage them if they end up as the weaker people in society. As I say, that is the basic principle of liberalism. I would have thought that Hon Michael Mischin and the Barnett government in general would have been able to get themselves in an imaginative position whereby they could wholeheartedly support a move that will simply give people one form of redress when they find themselves in a position of weakness.

Hon Michael Mischin claimed not to know how the bill was going to work. I fail to understand how he can have missed the point. I did not think that I could have made it more clear in my second reading speech, and certainly every single one of my colleagues on this side of the house made crystal clear the purpose of the bill. This is what I said —

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.

That is not rocket science. It was not supposed to be rocket science. It was not supposed to delve into any obscure, complex legal concepts. It was supposed to give somebody who finds their major asset has been sold for less than its market value, simply in order for the bank or the lender to recoup their part of the investment in that property, one small form of redress at law. That is all the bill does; that is all the bill ever claimed to do. It is not that complicated. I noticed that every time Hon Michael Mischin spoke—it is a shame that *Hansard* cannot capture lip curling—about “mortgage fire sales” he curled his lip with some sort of distaste; however, in my second reading speech I went on to say —

Translating that purpose into more common parlance, the amendments will stop banks and other financial institutions from holding “fire sales” related to defaulted mortgages.

This is about a conflict of two interests in society. We have the interests of the homeowner, for whom the home is almost always the major financial asset; part of which they will own, but the majority of which they will not, because it is owned by the bank or the lender who has provided the money. That is one interest. The other interest is the lender of that money. The interest of the lender of the money is simply to get back the amount it is owed. I made the point, other members on this side of the house made the point, and the point has been made over and over again in commentary on this bill and others like it in other jurisdictions, that if the bank or lender needs to recoup only part of the total value of a house in order to satisfy its own interest, that is what is likely to happen. Hon Michael Mischin asked for examples of that. All I can say is that he needs to get out more. He needs to go and talk to real people, instead of closeting himself away with his blogs in his office, shutting the door and only going out when he knows he is going to be wine and dined, and feted as the honourable member. He needs to get out more and talk to the real people who make up his electorate. If he did that, he would hear what I have heard and what every single member sitting on the Labor benches has heard; namely, that this happens constantly.

Several members interjected.

Hon SALLY TALBOT: Of course, we hear the way the government is responding; even by way of the interjections that I have would have thought anybody could see I am not going to take because I know that we want to move to the next motion.

I have received numerous calls, letters and emails in the past couple of years—since we began talking about this subject—from people in the industry who have said, “This happens all the time.”

Several members interjected.

Hon SALLY TALBOT: That is why Labor moved this bill. That is why Labor supports the bill. And that is why we have put in some considerable effort to take the debate through this house.

As members have noted, I used some figures during my second reading speech, which are of course now outdated. I note that Hon Michael Mischin pulled me up for getting a number wrong in the “Civil Property Possession Applications”. I really hate to use the word “cute” in relation to Hon Michael Mischin, but he rather glibly did not quote the note under the table. I assume that I am reading from the same document that he read

from, which is the “Civil Property Possession Applications” listing over about 10 financial years. The document states —

Note: As a result of a recent data clean-up, these figures vary from previous published statistics.

So the figures have been tweaked; nonetheless the substance is as valid as it was when I made my second reading speech. However, let me refer very briefly to two recent reports. The first is a University of Canberra report that was written up in *The West Australian* on 25 October, just over a week ago. The article states —

WA’s economy is outperforming the rest of the nation but the State has the highest proportion of homeowners under mortgage stress.

A University of Canberra report commissioned by the group Australians for Affordable Housing says 13 per cent of WA homeowners, or 90,000, had mortgage stress.

In the rest of the country the number is somewhat less than that, but in Western Australia it is very much a problem and a problem that has grown over the past two years. Perhaps this is the moment to remind honourable members exactly what mortgage stress is. Mortgage stress is not what Hon Michael Mischin described. Mortgage stress is not trying to sell a property in a depressed or depleted market. That is not mortgage stress.

Hon Michael Mischin: That is not what I said. I talked about mortgage stress as trying to service mortgages. Do not misrepresent me!

Hon SALLY TALBOT: Mortgage stress is when a person is spending more than 35 per cent—there is a bit of a variation in that percentage, but the standard figure used is more than 35 per cent—of their income on home loan repayments. That is what this is about. A recent Reserve Bank report puts the figure of Australians facing poverty due to unaffordable housing as one in 10. That is one in 10, Australia-wide. That is not just mortgage stress. Mortgage stress is the technical term for the position of committing more than 35 per cent of income to home loan repayments. This is, in the words of the Reserve Bank, facing poverty. That is what mortgage stress is. It has nothing to do with the falling value of property.

The second report that I want to refer to was mentioned in *The Australian* last Thursday, 27 October. The article states —

A SECOND wave of land in receivership is hitting the market, with at least \$1 billion worth of distressed property currently for sale ...

A total of 519 receivership and mortgagee-in-possession commercial properties have been listed ... this year ...

And it goes on to talk about residential properties.

The report in *The West Australian* of 25 October and the report in *The Australian* of 27 October both refer to the two-speed economy. This is the fundamental point that this Liberal government is simply unable to grasp: we currently have a two-speed economy in Western Australia.

I return to my description of the veil of ignorance and the device that is used to help people in exactly our position as legislators understand what it is like to be someone whose income is failing, whose household expenditure has moved way beyond their control and who therefore finds themselves in the position of losing their house. Members should lift the veil of ignorance and imagine what that might be like and then try to devise the remedy that they themselves would benefit from if they were ever in that position. There are Western Australians in all our electorates who are living in the slow lane of the two-speed economy. Those are the people Labor cares about. That is why this bill needs to be passed. I ask the Barnett government to support this bill and not to ignore the cries for help from people who are suffering from the two-speed economy.

Question put and a division taken with the following result —

Extract from *Hansard*
[COUNCIL — Thursday, 3 November 2011]
p8875c-8877a
Hon Dr Sally Talbot

Ayes (10)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Sue Ellery

Hon Adele Farina
Hon Jon Ford
Hon Ljiljana Ravlich

Hon Linda Savage
Hon Sally Talbot
Hon Ken Travers

Hon Ed Dermer (*Teller*)

Noes (18)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan

Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nigel Hallett
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton

Hon Simon O'Brien
Hon Max Trenorden
Hon Ken Baston (*Teller*)

Pairs

Hon Kate Doust
Hon Robin Chapple

Hon Phil Edman
Hon Nick Goiran

Question thus negatived.

Bill defeated.