

LANDGATE — FRAUDULENT PROPERTY SALES

Motion

MR J.N. HYDE (Perth) [4.01 pm]: I move —

In relation to the second known case of Landgate issuing a title deed to an unlawful owner, that this house —

- (a) condemns the Minister for Lands for failing to fund and introduce best-practice systems to ensure Landgate is not able to issue documents resulting from a fraud; and
- (b) calls on the Minister for Lands to immediately take responsibility for his failures in preventing another occurrence of this fraud.

The Minister for Lands' only solution after a year was a last-minute thought bubble on Friday. The minister's thought bubble, from his visit to Northam, was that he would overturn 120 years of property law without talking to the Attorney General or the cabinet. The Minister for Lands is clearly not on top of or overly interested in this portfolio. Minister Grylls is more interested in dreaming up wasteful funding of plastic cows and singing toilets under royalties for regions while canny scammers plunder Landgate with royalties for Nigerians! Under the Barnett government, fees of the service have been put up, with many fees in Landgate going up 45 per cent, yet service is down. The minister has contradicted himself. He was quoted in last Saturday's *The Weekend West* as saying that the new real estate standard would not be enough to overcome some sophisticated identity fraud, yet yesterday in question time the minister said that he would introduce systems so that it would be enough. During this debate we need to know whether the minister discussed his thought bubble from Northam with Bruce Roberts, the Registrar of Titles at Landgate. On Friday Mr Roberts was on Paul Murray's program on 6PR radio defending 120 years of Torrens title as being world's best practice, while the minister was chewing the cud talking about his thought bubble from Northam with a reporter from *The West* and saying that he would overturn Torrens title. The Barnett government pattern of blaming public servants and stakeholders continues, and we have seen it continue today. Be it with the Fire and Emergency Services Authority, the Corruption and Crime Commission or with Minister McSweeney, the pattern under the Barnett government is to blame everyone else and not to take ministerial responsibility. The minister needs to explain where his thought-out position on his solution of overturning the Torrens title system has come from. What consultation has he undertaken to come to this policy position? When will he introduce amendments to the act? When does he anticipate his new system being in operation?

A similar situation to the one we now face occurred a year ago and that is why this issue is a subject of great concern to Western Australians. It was the situation a year ago, the minister's government promised to fix it and a year later we have a mirror image of last year's situation. We need to know what the minister has really done in the intervening year, because his actions are beginning to look like a mirror image of what the Minister for Emergency Services did not do in his portfolio. Is the minister aware that Landgate International earns valuable income for the state internationally? It also proclaims on its website that it has been providing —

... world class advice to overseas governments since 1993.

Countries such as Vietnam, Indonesia, China, Mauritius, the United Arab Emirates, Trinidad and Tobago, Kiribati, the Philippines, Sri Lanka, Bangladesh, the Solomon Islands, Namibia, Zimbabwe and Papua New Guinea are countries that the Western Australian government has earned income from by being able to sell our intellectual consultancy through Landgate. The Minister for Lands puts this at risk.

Mr M.J. Cowper: What about Nigeria?

Mr J.N. HYDE: That line is coming if the member waits for just one more paragraph!

The minister's failure to fix this problem last year has put the available income stream at risk and he is harming our reputation internationally. What world-class advice did the minister provide to the Nigerian government, since this issue first surfaced a year ago; and, when did he advise it? The website for Landgate International proudly proclaims in a huge headline "World Class Advice". Clearly, if the minister was dinkum about this issue, he would have been personally in touch with the Nigerian government as a minimum. The minister's inaction has provided world-class advice to Nigerian scammers and that advice was, "WA's doors are open; come on down!"

As I revealed on 21 June this year, the Barnett government has increased fees for planning and land title documents by over 45 per cent in the past two years. This year alone, the fee for title searches on properties jumped by 26 per cent. Therefore, while Nigerian scammers have taken \$1 million out of WA by stealing two WA properties, the government's financial benefit from this crime is the extra dollars it got when the scammers paid for a title search with their ill-gotten gains. As this year's budget papers reveal, despite a sharp decline in

business activity in the property market, the minister did not adjust the Landgate business model and he did not move a massive number of staff into fixing these problems. The salaries cost within Landgate went up despite there being massively fewer property transactions to be undertaken. According to the budget papers, in 2014–15 property buyers are projected to be paying the Barnett government \$2.1 billion in transfer duties. How much of this income from property transfers is the minister actually spending on ensuring that the transfer of documents is fraud proofed?

The minister knew about this issue the weekend before last, but he failed to warn WA homeowners that they were at risk. He was more concerned with the media damage control strategy getting him out of the firing line. It was not until my question in Parliament last week that he had to 'fess up that there had indeed been another identical fraudulent sale, although he kept repeating that it was only an allegation. This, of course, was a year after the last fraudulent sale, when his government promised to fix the problem. The eventual press release put out by the agencies, with no ministerial responsibility shown, stated —

“Since the last successful scam was reported, an extensive Government and industry education campaign was conducted with the real estate and settlement agents, giving advice on how scams can be avoided.

Minister, please table this extensive campaign that has been undertaken. What did it cost? Which behaviours did it change at Landgate? Which behaviours did it change within the minister’s portfolio?

The minister keeps putting out this mantra that tries to blame the real estate agents and the real estate industry. Of course, we need to understand that most real estate agents are small business people. The department that the minister presides over is an agency that gives world-class advice and provides information to a number of nations that the member for Kalgoorlie wants to visit. The minister has to look at this relationship in terms of the legalities. The legalities are that the buck stops with the minister. The buck stops with the person who is able to get from Landgate a document that gives people surety of title. That is where the buck stops. The minister proposes that a 100-point check would fix all the problems; therefore, he is trying to put it back on the real estate agents. The member for Girrawheen and I showed in this Parliament back in 2004–05 that those documents can easily be produced fraudulently when we produced a document, the University of Western Australia graduation certificate—a certificate of identity—for one Matthew Birney for his degree in theology, and an Australian citizenship document for Amanda Vanstone. They were totally fraudulent documents, yet the minister proposes that the solution to this issue is the 100-point check.

Mr J.J.M. Bowler: Was that a different Matthew Birney?

Mr J.N. HYDE: No, it was ours who had been off to visit a certain person slightly lower than the deity with his partner, if the member remembers that issue.

Mr B.J. Grylls: So you created a fraudulent document to prove that you could create fraudulent documents!

Mr J.N. HYDE: Not at all; we were able to secure them, which we did that year, because if we actually created the documents that, of course, would be an offence. It was easy to secure them. As we know, the procurement of documents is relatively easy. The reason that we have Landgate, and the reason that under the Torrens land title system we established a system whereby a state government through its agency can issue these documents, is to give surety of title. The minister really needs to explain how this thought bubble from Friday to overturn the Torrens system of 120 years will suddenly fix the problem today and why he did not come up with that idea last year. More importantly, the minister needs to explain why he has not worked diligently on that solution through his agency since last year. As Anne Arnold, CEO of the Real Estate Institute of WA, stated earlier this week, calling it a scam trivialises it. It is stealing; it is fraud. I think that by constantly referring to this as being just a scam when it involves \$1 million in just two properties and four families have been affected trivialises a very important problem that the government has to solve. There was stunning silence from the minister last year over this issue.

The minister’s head public servant, Bruce Roberts, who is an expert and the registrar of titles at Landgate, clearly has a different view from the minister on the easy solution or the ability to change the Torrens title system or the original Transfer of Land Act 1893 that governs the process. Another issue in this case is that very early on Mr Roberts said quite publicly, when he was hauled out instead of the minister at the media conferences, that human error had occurred in the department. It was very brave for a public servant to say that. Really, the minister should take responsibility because clearly he cannot on one hand say that he manages an agency that provides world-class advice while, on the other hand, acknowledge that it is easy for human error to result in the transfer of a half-million-dollar property. Clearly, we do not have all the details from the current fraud activity, but we know that in last year’s case the actual signature was not even done with running writing; it was akin to a five-year-old printing a signature and it was verified by a stamp that stated “high commission of Nigeria”. If three people in Landgate were independently checking that, or whatever systems the minister has put in place,

would someone not think, “Hello; there actually isn’t a high commission for Nigeria in Western Australia and that signature looks a bit funny. Maybe I should check this”? Surely the minister must have checks and balances in place. The people of Western Australia are entitled to know what systems have been put in place and what the minister has done in the past year to fix the problems that were identified. We also need to know whether the minister has considered learning from what happened when Graham Edwards was the minister for licensing or the police and from the introduction of the Register of Encumbered Vehicles for cars, which put a huge dent in the stolen car industry. In fact, by having a more robust system, we were able to virtually overnight eliminate that whole industry of stolen cars being sold to innocent parties.

Parliament needs to know exactly what impact the minister’s statements—the thought bubble from Northam on Friday—is having on Landgate International, which has been successfully operating as a business and as a consultant to a number of countries, particularly developing countries. Has the minister already made those countries aware that he plans to change totally and legally the system that Landgate International and the Western Australian government has sold to these other nations? What information has the minister given to these other nations about whether he is having second thoughts about Landgate’s world-class advice? If the minister is having second thoughts about his thought bubble, he needs to be up-front with us in Parliament today and let us know because, as well as being a boon for royalties for Nigerians, clearly if the minister is making such a change in property law, it will be a boon for lawyers. Lawyers will be licking their lips at such a change being mooted by the government. We need to know what sort of legislative priority there is for this change to the Torrens system and the impact it will have.

The Real Estate Institute of WA on 27 May, immediately after the budget, put out statements criticising Landgate’s decision to increase the cost of title searches on properties by 26 per cent.

Ms M.M. Quirk: How much, member?

Mr J.N. HYDE: Twenty-six per cent.

Ms M.M. Quirk: That’s outrageous.

Mr J.N. HYDE: Of course it is outrageous. It is a pattern we have seen throughout the Barnett government. What is really outrageous —

Mr C.J. Barnett: That’s very unkind.

Mr J.N. HYDE: I apologise profusely for being unkind and honest. Thank you, Premier; I appreciate your attendance.

Mr C.J. Barnett: You’ll get dropped off the garden party list the way you’re going.

Mr J.N. HYDE: I do not think I am on it, Premier. From that list of country representatives the member for Kalgoorlie was meeting, this could be an issue that the Premier is pigeonholed on under the tent at the garden party. The last nation that hosted the Commonwealth Heads of Government Meeting, Trinidad and Tobago, purchased, through Landgate International, our land title system. Because of the cost blow-out in hosting CHOGM, the government of Trinidad and Tobago fell mightily at the last election. The opposition leader who campaigned against the excessive spending on CHOGM will be in the tent with the Premier. One of the issues he will probably be asking the Premier is, “What’s your lands minister doing? This world-class advice which you gave us and which we paid you genuine Australian dollars to buy—are you now saying that you are reversing 120 years of land title legislation and reversing the Torrens system?” Will the government be paying for the software updates for this intellectual copyright that countries such as Trinidad and Tobago and other fine members of the Commonwealth of Nations have purchased from the Western Australian government?

The Real Estate Institute of Western Australia made the very strong point that in the 2014–15 budget a projected \$2.1 billion will be received by the Barnett state government from land transfers. It is a reasonable question to ask: how much of that \$2.1 billion that the Barnett government receives for the land title transfers is actually being spent on security and fraud-proofing those very titles that people are paying to receive? It is a pretty basic question. We have been told that in fact there may have been only 400 originating transactions in the last year. Again, it is a fair question to ask: what is the amount of income the Barnett government has received from those 400 international transfers of titles alone, and how much of that is being spent on fraud-proofing transfer of titles that originate or end up overseas? We need to know how much the Premier’s rhetoric from last year and, importantly, from this year has actually resulted in the spending of real dollars provided by real homeowners who are expecting a real service from the Barnett government when they pay to transfer their titles.

The media statement of 11 August says that there will be a “joint taskforce comprising investigators from Consumer Protection, WA Police Major Fraud Squad and representatives of Landgate”. It was clearly aware, probably shortly before the government was, that this was underway, despite a public statement by the Barnett government to warn other homeowners in case they could be victims of fraud.

The final statement on page 3 of the document states —

Since the last successful scam was reported, an extensive Government and industry education campaign was conducted with the real estate and settlement agents, giving advice on how scams can be avoided.

Has the Auditor General looked at that campaign? What was spent on that campaign? What actually happened? Is that paragraph just a motherhood statement to give the appearance that the minister did something last year when he was alerted to the situation?

The minister would appreciate that this is an issue of concern to Western Australians. The business activities of Landgate International not only reflect on the reputation of Western Australians and the many Western Australians who are doing business overseas, but also impact on the great number of people from overseas who buy property in Western Australia, whether it is farmland or residential property, and on the issue of the security of titles. What are people overseas thinking when they hear how easy it is to fraudulently obtain title to land or property here in Western Australia? In terms of sovereign risk, are they at risk when they buy a property in good faith because of the government's changes to the Torrens title? Will they end up not owning that property even though they currently have a legal document and that will be stripped from them? These are really important issues for business investors. On the issue of compensation, when Landgate admitted that human error had occurred, as it did last year in the case of the gentleman in Karrinyup, compensation was still being negotiated.

It is fair to say that, if the fraud has occurred in two months, the compensation can surely be negotiated in a similar time frame. It is unacceptable for the negotiation for compensation to stretch out over a year. In terms of the review, the Parliament would certainly like to know the key performance indicators for compensation. At what point does the government admit liability and become involved in compensation? In normal property law, compensation may pertain only to the previous sale figure of the property, but of course if fraud is involved, a quick sale could have been put through at a lower price. Is that the price that will be negotiated for compensation? Is it the current price? Does it factor in issues such as the loss of enjoyment, surety, health impacts on people who arrived home, perhaps on QF7 —

Mr B.J. Grylls: Are you defending the Torrens system or attacking it?

Mr J.N. HYDE: We are trying to find out what the minister's view is.

Mr B.J. Grylls: You keep on changing your point of view. I just want to know whether the Torrens system is operating perfectly, as you're pointing it out.

Mr J.N. HYDE: The minister announced in a thought bubble in Northam that he was overturning it.

Mr B.J. Grylls: Sit down and I will explain that to you.

Mr J.N. HYDE: I appreciate the invitation to sit down so that the minister can speak. I shall undertake to do that.

Mr B.J. Grylls: As the minister, I have to respond. If you are speaking, make your point. I'll speak last. You are seriously going to make points to —

The ACTING SPEAKER (Ms A.R. Mitchell): Excuse me, members. Someone has to be on their feet at the moment.

Dr A.D. Buti interjected.

MR B.J. GRYLLES (Central Wheatbelt — Minister for Lands) [4.29 pm]: Member for Armadale, normally the process is that the opposition makes the case against the minister, and the minister responds. The member has now suggested that I respond and then he will make the case, to which I cannot respond. That is fine; I am very happy to respond to the issue, because it is a very serious issue, and I am glad to have the opportunity in the Parliament to explain what has happened, some of my comments and how Landgate will go about dealing with this issue into the future.

I will start with the member for Perth's assertion that I was about to ditch the Torrens system. I confirm to the house, and to satisfy the member for Perth, that there is no intention of ditching the Torrens system. The Torrens system is a long-established principle of property law adopted by all states, and I have no intention of ditching it. I understand how important the indefeasibility of title is. In answer to questioning from *The West Australian*, we said that the Torrens system allows for the defrauded property owner to receive compensation. Most of the commentary around this issue indicates that, yes, we understand the principle of and support the Torrens system and we understand the need for that system to provide surety in the land administration, banking, real estate and conveyancing systems. I merely made the comment—it has been made to me time and again and in talkback commentary on this issue—that the wider public is very concerned that the Torrens system compensates the property owner who has been defrauded rather than allowing the property owner to keep their house. Under no circumstances do I want to turn upside down the Torrens system. I am not proposing changes to the Torrens

system. After all the concerns that have been raised with me as Minister for Lands, I talked about looking at how we can work better with the owner of the defrauded property now that this has happened twice. That was my commitment, and I maintain that commitment. Again, the legal principle will always be that those with the title hold the title, and that has to be maintained.

I have asked Landgate to look at the options. One option may simply be to enable us to facilitate an aggrieved defrauded owner working with the property purchaser and saying, “This is where the problem is.” If I were the purchaser of a property and found that the owner of the property that I had purchased did not put it up for sale and had been the victim of fraud, I would feel some discomfort about the deal; however, I would know that the Torrens system absolutely protects me and my investment. That is the system, and I have no intention of changing it. Given that there have now been two cases, I will investigate how we might provide more support, after the processes of the Torrens system are complete, to a property owner who has essentially been defrauded. There have now been two cases whereby property owners, unbeknownst to them, have had their properties sold. Under the Torrens system, they were offered compensation, and that was it. Their property is gone, the new owner has the indefeasibility of title and the ownership has been transferred. I assume that the member for Perth has been involved with this issue. Has anyone said to him, “We think it’s a pretty fair cop that you’ve been defrauded but you lose your house”?

Mr J.N. Hyde: Say that again.

Mr B.J. GRYLLS: Has anyone said to the member for Perth that they think it is a fair outcome that, after being defrauded, they lose their house but are eligible only for compensation.

Mr J.N. Hyde: No; everybody is saying that it is unbelievable that they can lose their house. That is the whole issue. But, minister, you’re contradicting yourself; you can’t say that you’re not changing Torrens, but you’re changing it.

Mr B.J. GRYLLS: No; I did not say that I was going to change Torrens.

Mr J.N. Hyde: Yes, you did.

Mr B.J. GRYLLS: I did not. I said that I would investigate looking at maybe dealing with a property owner who may not have wished to have their property sold, understanding that it is based on the legal principle of the Torrens system.

Mr J.N. Hyde: So you’re going to ignore the law then.

Mr B.J. GRYLLS: No. I have said that the Torrens system is not in dispute. All I have said is that it is worthy of investigation by my agency. No legislation has been planned and there have been no discussions with the Attorney General, because we are not even going down that path yet. I am just saying that all the information I have received indicates that the wider community is now aware of the Torrens system and that if a property owner is defrauded of their property, they are entitled to compensation only and their house is lost.

Mr J.N. Hyde: But how are you going to prevent it? That is the real thing that people are asking.

Mr B.J. GRYLLS: Let me come back to that.

We have cleared up the story in *The West Australian*, which the member added a little to. That is not my position. I am not looking to amend the Torrens system or turn the many years of property law on their head. I am merely responding to the fact that members of the community are now aware that this can happen and are aware of the consequences if it should happen to them. I think that any good government should at least look at the issue, and that is what I have committed to do. I will look at it.

The Mildenhall issue occurred in August 2010. Landgate became aware of it in September 2010. At that time, Landgate reviewed the registration process. The registrar of titles recommended to all customers in the land and property industry that property professionals dealing with a property transaction—that is, real estate agents and conveyancers—start implementing a 100-point identity check. That information bulletin was issued on 17 September 2010. In December 2010, the Commissioner of Titles directed that replacement duplicate certificates of title would not be issued over the counter at Landgate, so it was made more difficult for people to get a duplicate certificate of title. An extensive information campaign was undertaken by Landgate to ensure that the industry players—real estate agents and conveyancers—were aware of those changes. The 100-point identification check is similar to that used under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. We gave them some recommendations about that 100-point identity check. Landgate increased scrutiny of overseas transactions, including checking signatures. Any overseas transaction was flagged to a higher level and checked by a senior officer. To date, 400 transactions have been checked, and Landgate is committed to reviewing all those 400 transactions again. As the minister responsible for Landgate, I understand the Westminster system. I apologise to the owner of the property in question, because the Landgate officer did

not elevate this transaction to the next level of checking. It was a human error—a mistake—at the Landgate desk that this transaction did not get elevated.

The member for Perth made out in his commentary that this is Landgate's challenge to solve and that we should not go back to the small business sector of the real estate industry or the conveyancing industry. I want to make it very clear what would happen if Landgate identified the fraud at the point of registering the title. If the issue was elevated, our elevation process indicated that there was something wrong and it was found that there was a fraud, at that point the offer and acceptance would have been completed by the real estate agent, the fraudulent seller and the willing purchaser would have agreed, a settlement agent would have been contacted and mortgage documents would probably have been filed. Landgate gets this transaction right at the very end. At that point, all of that has already occurred. Essentially, by the time Landgate gets to see it, the money has already gone.

Mr W.J. Johnston: That's rubbish!

Mr B.J. GRYLLS: Explain that.

Mr W.J. Johnston: The money is transferred at settlement.

Mr B.J. GRYLLS: Settlement has already occurred before the registration of title.

Mr W.J. Johnston: No; settlement cannot occur until the title deed is passed. That is the purpose of the Torrens system.

Mr B.J. GRYLLS: My understanding is that settlement has already occurred.

Mr W.J. Johnston: That's not true. It's wrong. You're just wrong. Minister, you've got it wrong.

Mr B.J. GRYLLS: No, the member is wrong, unless the Commissioner of Titles, who is in the Speaker's gallery, is wrong.

The bottom line is that Landgate is involved at the very end of that process.

Mr J.N. Hyde: Why are you paying compensation, then, if you're not responsible?

Mr B.J. GRYLLS: Because that is the Torrens system. Under the Torrens system, the state actually backs the transaction. The state is essentially backing the real estate agent, the conveyancing agent, the owner and the purchaser. That is the Torrens system, which the member expressed some expertise about during his comments. No?

Mr J.N. Hyde: You were listening, so thank you for that endorsement.

Mr B.J. GRYLLS: Let me explain, because I think this is really interesting. If Landgate found out at the end of this process of purchasing a house, the registrar of titles could say, "I am not comfortable with this transaction. I am not going to register the title." At that point, the purchaser believes that they have purchased the house and the money has already been transferred. That is what happens at settlement. At settlement, the money is transferred. The bank takes its documentation. That is what is involved with settlement; the conveyancing agent does it. At that point, they believe the transaction is complete. They then take it to Landgate and Landgate registers the title.

If at Landgate that was identified and the registrar of titles said, "I'm not going to register the title", straightaway there would be a legal dispute. The purchaser of the property would take Landgate to court and say, "Register my title. I've paid good money for it." The defrauded owner of the property would say, "Don't register the title. I've been defrauded. I never intended to sell the house", and it would end up in court. At the point at which it ends up in court, the Torrens system comes into play, and the Torrens system provides essentially all the legal support to the purchaser. My advice from the registrar of titles is that those legal disputes are always found in favour of the purchaser. Therefore, even if the registrar of titles found that—how am I going?—there was a problem with this, there would still be the problem in a court case. Even though the owner had made it clear that they did not want to sell the property, the purchaser of the property would still in all likelihood win the case in the court, and the registrar of titles would be directed to register the title. Therefore, that is why we think that the work on this issue has to be done at the beginning with the real estate agent and the conveyancer. I have told Landgate that this has now happened twice. We made a mistake on the second one by not elevating it, and the human error occurred. Should there be a third one, it needs to be found by Landgate. However, as I said —

Mr J.N. Hyde: Minister, in the example you have given, you would actually have the fraudster. If Landgate had put a stop to the sale, that would be before money actually went to the Nigerians.

Mr C.C. Porter: But the sale has happened.

Mr B.J. GRYLLS: The sale has happened.

Mr W.J. Johnston: The sale happens when you transfer ownership.

Mr C.C. Porter: The only thing that they could stop is the marking or the changing of the title, and they might be directed to do that by the person who purchased the property.

Mr B.J. GRYLLS: That is correct—under the Torrens system. That is why, when this happened first in the Mildenhall matter, the registrar of titles indicated to property professionals in the real estate and conveyancing sector that the 100-point identity check was critical. Aside from what was said by the member for Perth today, at the moment we are seeing the professional property sector actually agreeing that it must now take a much stronger role in ensuring the identity of a seller. I think that the sector is well down the track, working with the Department of Commerce—the department has taken the lead on this—Landgate and the police, of looking at bringing in a mandatory 100-point identity check at the point at which the person who wishes to sell the property goes to the real estate agent. The most likely spot to avoid the problems of a defrauded property owner is at that point.

Mr C.C. Porter: Pre-settlement.

Mr B.J. GRYLLS: Pre-settlement; that is right. When the seller first goes to the real estate agent and says, “I’ve got a house for sale”, the real estate agent will say, “I need to prove your identity and I need to prove that you are the owner of that house.” I could have hundreds of millions of dollars in Landgate fraud detection, but by the time it gets to Landgate, we already have a problem, and the defrauded property owner, who is in all likelihood in a court case, will not end up getting the house back. That is why we have planned these changes.

I will talk about what is going to happen now that the second incident has occurred. Again, we are getting very good cooperation from the real estate industry and the conveyancing industry. There is wide recognition that this is now not a one-off case. There is now an understanding that they will have to take some onus to help drive out this fraud. It is interesting to note that I was told that with credit cards, three per cent fraud is basically budgeted for; so three out of 100 credit card transactions are fraudulent.

Mr J.N. Hyde: What’s your budget in Landgate? What business case do you work on?

Mr B.J. GRYLLS: I am hoping to stop it at two. Two would be an excellent place at which to stop it.

Mr J.N. Hyde: No, come on. If you’re accepting compensation, there must be within your department a recognised level of acceptance of fraud. What is it?

Mr B.J. GRYLLS: Again, from my understanding and from what I have been told, the Mildenhall event was the first one in Australia. I think that the investigation is still taking place.

Mr C.C. Porter: Does Landgate accept liability for compensation?

Mr B.J. GRYLLS: Yes, Landgate has accepted liability for Mildenhall compensation, and that is being negotiated.

Mr J.N. Hyde: So you’ve got 100 per cent of the cases in Australia.

Mr B.J. GRYLLS: That is correct.

Mr J.N. Hyde: Hasn’t that sent you alarm bells?

Mr B.J. GRYLLS: Does that not send alarm bells? No; it says that we are now in a world in which fraud is more and more prevalent and that we have to be able to deal with that, and we have to put in place complex systems to try to deal with that. Can we stamp out fraud altogether? I would not have thought so. Can we do everything in our power to try to limit it and to try to minimise it? Absolutely; and that is exactly what Landgate is putting in place.

I will talk about what has been discussed in the past week about the next level of security over these transactions. The registrar will now be satisfied only with documents that have been witnessed overseas by an Australian consular official, and Landgate will confirm the witnessing directly with the consular office. So we are really going to focus on overseas transactions. The member is right; there are about 400 or so a year. We are going to make sure that we do not just accept overseas witnesses. Each of those transactions will have to involve going to an Australian consular office, or, if that is not possible, an Australian contact, I suppose, overseas. Again, this is what is planned to be implemented. I am sure that we will come out with the official details, but I wanted to provide the member with the information about what is planned to be put in place.

Mr J.N. Hyde: Why wasn’t that done a year ago?

Mr B.J. GRYLLS: Again, it was not put in place a year ago because it was believed that this was such an isolated incident that we would not completely change the whole system based on one incident. Now it looks like we have two. It is quite clear that we are a target, and it is quite clear that we have to make this process much more onerous, and that is about to happen. This process is about to become much more onerous on real estate agents, much more onerous on conveyancing agents, and much, much more onerous on overseas property

owners who wish to sell their properties. This will not come without some push back, I should imagine, from probably overseas property owners. But I believe that the real estate industry, to its credit, now understands the extra levels that we will need to go to.

All overseas property owners who are concerned about the possibility of identity theft will be able to lodge a new caveat over their property that prevents unlawful change of ownership. Under these new measures, they will be able to remove the caveat only by attending the Landgate Midland office in person and identifying themselves to the satisfaction of the registrar. Therefore, for people overseas who are concerned about the potential for identity theft and about the potential for this to occur to them, we are bringing in a new caveat to be put on property titles, and the only way that that caveat will be able to be removed is by them attending in person at Landgate.

Mr J.N. Hyde: What are you going to charge for this core service?

Mr B.J. GRYLLS: Again, I am outlining to the house what the intended changes are. There will be more details to come. This is one week after Landgate found out.

Overseas transactions will have the extra level of scrutiny applied to them at Landgate. A senior Landgate examiner will confirm evidence of the 100-point check and check the validity of the witness. Therefore, for an overseas transaction, we will ensure that the 100-point check and the validating of witnesses actually occurs. That means that Landgate will have to start to go back through the whole transaction to check that the identity checks were put in place.

Mr C.C. Porter: By the real estate agent?

Mr B.J. GRYLLS: Yes, by the real estate agent, to ensure that it has been done.

In addition to the existing process of requiring witnessed documents for each overseas transaction, the registrar will require to see evidence that the 100-point identity check was conducted by the conveyancer. This is to be submitted with the transfer documents. If this is not confirmed, a stop will be put to the transaction. Again, the registrar will require to see evidence that the 100-point identity check was conducted by the conveyancer. This is to be submitted with the transfer documents. If this is not confirmed, a stop will be put to the transaction. Again, we are saying that the overseas transactions that we are elevating to the extra level of security will have that level of onus put on them.

We are also going to extend the existing TitleWatch service that allows a person to activate an email alert to advise subscribers of potential land transactions on their nominated land title. Potentially, therefore, people will be able to register with Landgate so that they can be emailed if any activity occurs around their title. This will be a significant change. Landgate informs me that this TitleWatch service will ensure that an owner is notified prior to settlement in 96 per cent of land transactions that something is happening with their title. If someone is working away overseas and suddenly receives an email that their title is being accessed, they will have great cause for concern.

Mr J.N. Hyde: Will there be an extra charge of \$27.50 for this core service?

Mr B.J. GRYLLS: The amount of \$27 is the charge for TitleWatch.

Mr J.N. Hyde: Do you not think TitleWatch should be a core service? You get \$2.1 billion for land transfers.

Mr B.J. GRYLLS: Landgate does not get money from stamp duty transfers, member for Perth; the consolidated fund gets the revenue from stamp duty transfers. Due to the downturn in the property market, Landgate has had its budget substantially reduced. Given the fewer transactions, there has been less need for people to register transactions. For the interest of members present, there were 280 000 registrations in the last financial year, down from 460 000 at the peak of the real estate boom.

Mr J.N. Hyde: Every time a real estate agent does a title search or anything like that, will people be alerted, including speculators?

Mr B.J. GRYLLS: No; an email alert will advise people who register with the TitleWatch service of potential land transactions on their nominated land title. The important part about this, as I said earlier, is that we have to find a way to identify potential fraud before settlement. If it is not found until settlement occurs, it is too late. That is why the real estate agent and the property conveyancer are key to our success in stamping out property fraud like this, because it is at that early stage that we have a chance to stop it.

Mr C.C. Porter: What is it that the fraudster gets the settlement agent to do in the transaction; do they duplicate the title they have accessed electronically?

Mr B.J. GRYLLS: No.

Mr C.C. Porter: Is it forgery?

Mr B.J. GRYLLS: My understanding is that once someone has assumed identity fraud, if they access duplicate copies of titles and so forth, it allows them to undertake the transaction. Once a person has assumed someone's identity, they are essentially that person, so they can access what they would access as that person because they have stolen the person's identity.

Mr M.W. Sutherland interjected.

Mr B.J. GRYLLS: Yes.

Mr J.N. Hyde: I still cannot believe you guys have not discussed this in cabinet; it is unbelievable.

Mr T.K. Waldron: You should have got your facts straight before you came in.

Mr B.J. GRYLLS: Can I say also that —

Mr T.K. Waldron: You got the main principle wrong.

The ACTING SPEAKER (Ms A.R. Mitchell): Minister for Racing and Gaming!

Mr B.J. GRYLLS: Can I say also that a joint task force of consumer protection, WA Police and Landgate has been established. It is operating feverishly at the moment and intends to introduce a mandatory regime. Until now, it has been a real estate best practice regime, but now we are intending to implement a mandatory regime for client identification to be undertaken by real estate and settlement agents. The Department of Commerce will lead this initiative with the support of Landgate, WA Police, REIWA and the Australian Institute of Conveyancers WA. I welcome especially the very strong commitment of the Real Estate Institute of WA and the Institute of Conveyancers to understand this challenge, to be part of the solution and to work very closely on implementing the changes that should ensure we minimise the risk of this fraud.

This new mandatory regime for client identification will include the 100-point identity check. If we think about this, when people try to open a new Telstra account, they have to undergo a mandatory identity check. Telstra asks people their mother's maiden name. To open a bank account we have to undergo a 100-point check. On the radio the other day I heard a stockbroker say that anyone who wants to open even a small account is required to satisfy a 100-point identity check. That has not been mandatory in the real estate sector. I think these two frauds have led to the need to make this mandatory, and I look forward to continuing cooperation with the property conveyancing and real estate sectors in putting in place those checks and balances. They must be done at the beginning of a transaction so that we do not end up with cases like these two, in which property owners have been defrauded of their properties; although, because we operate under the Torrens land title system, they will not be left out of pocket because they will be compensated, I do not think that is a perfect solution. I respect and endorse the Torrens system. But it would be much smarter if potential property fraud was identified initially by the real estate agent or the conveyancer prior to settlement rather than the defrauded property owner being compensated. Member for Perth, this is a very serious issue. Quite clearly, Western Australia has been targeted in this way. Given the amount of publicity these incidents have engendered, more people now know they have occurred. I am assuming that the more people know about fraud, the more people think about it, which means we have to be absolutely sure that we do as much as we possibly can to improve our processes.

I finish with a word of caution for property owners, especially those who are absent overseas and who do not know their neighbours or who may have land rather than a house. It is quite clear that we have been twice the target of fraud in this way, and we encourage everyone to make themselves aware of the extra level of scrutiny we are requiring in the land transaction process as well as the extra things they can do through TitleWatch, lodging caveats over their properties and making sure that they keep a very close eye on what to many is their most important asset. Again, although our Torrens system will ensure that defrauded property owners are compensated, I believe it would be much better if we detected the fraud at the beginning and saw that the perpetrators were brought to justice rather than relying on the Torrens system at the end of the process. To me that is not very satisfactory for the defrauded property owners.

I go back to where we started. After the Mildenhall issue, Landgate put in place an extra level of scrutiny, but that extra scrutiny was not followed in the case that is currently being investigated. As Minister for Lands, I apologise for that and I apologise for the fact that that was not found at that point. I have said to Landgate that I want to see what it will take for us to make sure that when it gets to the registration and title search, we find these frauds. I believe the process we are putting in place now will mean that if the real estate agent and the settlement agent have not found a fraud, we will have done all we can in this new regime so that the fraud is found by the registrar of titles at the registration process. However, that is not the perfect outcome for the defrauded property owner.

Mr J.N. Hyde: Minister, if we split the motion into two, will you accept part (b) of the motion since you have quite openly apologised?

Mr B.J. GRYLLS: I do not think we will support the motion, member for Perth, but it is a very serious issue. It is something I take very seriously. I have been meeting almost daily with the Landgate senior officers. There was some criticism from the member for Perth that Bruce Roberts did the press conference. I actually welcomed that. I thought it was fantastic that the —

Mr J.N. Hyde: We know you welcomed it; you should have been there.

Mr B.J. GRYLLS: I am not one to shirk a press conference, member for Perth, I can guarantee that.

Mr J.N. Hyde: Yes, you did.

Mr B.J. GRYLLS: I did not shirk it at all. I welcome the fact that the person with the expertise in this matter was happy to talk to the media about the intricate details. As we have seen today, there are myriad issues involved in this and rather than have Bruce talking to me, essentially, from behind, it was very, very good to have him there, and I welcome that. I have been interviewed by Howard Sattler on this, member for Perth, and I will do as much media as —

A member interjected.

Mr B.J. GRYLLS: It was a very enjoyable experience. This is a serious issue and Western Australians want to know that the titles to their homes or their investment properties are protected. They are now aware that there have been two frauds, which calls that into question. We as a government will act to make sure that we can do everything possible to stamp out property fraud in Western Australia.

Last week, the member for Perth in his question without notice asked whether I can rule out that this will ever happen again. I cannot do that. I cannot rule out that this will ever happen again. These people who want to commit fraud in many cases are sophisticated and steal identities. In partnership with the Department for Commerce, WA Police and experts in the field, we need to ensure that we do all we can to look at how those people are operating and try to minimise as much as we can the incidence of property fraud in Western Australia. I have full confidence in the Landgate board and team. The member for Perth denigrated the work that Landgate is doing internationally. Some of that international work is in Indonesia. We have exported our FireWatch program to allow Indonesia to monitor its forest fires. Some of the member for Perth's churlish comments about Landgate's activities were not warranted, but I respect the member's right to raise this serious issue of title fraud in Western Australia. I give my commitment to the house and Western Australians that, as minister, I am determined that we do all we can to minimise property fraud in Western Australia.

DR A.D. BUTI (Armadale) [5.01 pm]: As the Minister for Lands today admitted, and as everyone in this house would probably agree, no doubt property is a very important subject to all Western Australians and Australians generally. Our homes and properties are so important to our social and economic fabric. Earlier today, an inquiry report on the Kelmscott–Roleystone bushfires was tabled. That report was so important because it dealt with the loss of homes; 71 homes were lost and as a result people's lives in some cases were ruined and in many cases were devastated for a long time.

The minister outlined a number of reactions or responses to the problem of the Nigerian fraud scheme. The minister criticised the member for Perth for today bringing this motion to the house, but at least one thing that this has done is caused the minister to flesh out a number of measures that he proposes to instigate. Many of those measures make sense if they are implemented properly. It will be interesting to see how those measures will be implemented. The minister did not really give much detail on the implementation process. It would be good to have some more information on how some of those reforms will be instigated.

Mr B.J. Grylls: If I can just interject, the really valuable thing is that the real estate agents and the conveyancing sector are crystal clear that they need to act. In partnership with government agencies, that will be a rapid process, because again we are asking real estate agents to do something that they have never been forced to do before. It will be relatively onerous.

Dr A.D. BUTI: I think the member for Perth also asked why some of these measures were not implemented earlier. In hindsight it is always hard to say when the appropriate time was, but one would have thought that after the first incident, the Mildenhall incident, it was important that this matter was regarded with a greater sense of urgency and gravity. I repeat that many of the measures that the minister has mentioned today sound very promising, but I wonder why some of those measures were not introduced earlier to avoid the second incident.

The minister needs to congratulate the person who came up with the title alert system that the minister mentioned.

Mr B.J. Grylls: TitleWatch.

Dr A.D. BUTI: That is right; it is called TitleWatch. I think that service may go a long way to alleviating some of the problems.

I think the minister also mentioned the issue of education. We need to engage with industry on this, but we also need to engage with the whole WA population. The Western Australian population needs to be educated on what security of tenure means under the Torrens system. Indefeasibility of title is often hailed as the catchcry of the Torrens system. Two principal advantages of the Torrens system are often claimed: one is the security of registered property owners or property title, and the other is the protection given to the bona fide purchaser for value without notice of any fraud. But those advantages are obviously in tension with one another. On the one hand, we say that we will protect security of title, but on the other hand we say that we will also protect the bona fide purchaser with value. What about if it is a result of fraud, but not fraud on the part of the purchaser? That is what happened in the two cases that led to this motion coming before the house today.

I do not think that the community really understands what we mean by indefeasibility of title. In fact, it is a misnomer. The Torrens system does not have a proper indefeasibility of title because someone may have title one day and the subsequent title will defeat that person if that subsequent title was a bona fide purchaser with value, even if that is the result of fraud, but not fraud on the part of the purchaser. I would be interested to hear from the minister about whether he will also engage in an education program for the general population. Although many of the measures the minister has mentioned today are laudable, they will not mean much if people do not engage with the system. I was wondering whether the minister might have some ideas on how he might educate the general population.

Mr B.J. Grylls: I think what the member is saying is valid; that is, it is one thing to change the system and it is another thing for someone overseas to know that we have changed the TitleWatch service to give them more protection. If people do not know about it, they will not engage in it. We will certainly discuss how we get that information out. Essentially, the first round was about advising real estate agents about the 100-point identity check. That is what we essentially tried to do. Quite clearly, it now seems that we need to make sure that all property owners are aware of the risk.

Dr A.D. BUTI: As I said, the problem is that indefeasibility of title is a bit of a misnomer. It is also a problem with the various legislative schemes around the country. In Western Australia under the Transfer of Land Act, the indefeasibility of title is not found in one provision; a mosaic of provisions deals with indefeasibility of title. What is meant by indefeasibility of title is not clear for most of the general population in Western Australia and probably even many of the people in the profession. As there is a misunderstanding of what we mean by indefeasibility of title in the Torrens system, people have been lax and have not taken care to ensure that they have proper security of title and that their property is protected.

As the minister conceded, compensation is not really sufficient reparation for losing one's property. Yes, someone may be able to use the money to buy another property, but it may not be in the location of the original property. That original property, which rightfully belongs to that person, has now been lost due to some scheme that is really unlawful, but under the Torrens system it is registered as a proper transfer. It seems absurd that we can have a proper transfer of property that has come about through fraud, but not fraud on the part of the purchaser.

The Torrens system has many, many advantages. One of the advantages is that it provides a system of registration of title by the registration itself. We do not have to go behind the registration to determine the property owner. The registration of the property title provides security of ownership, but that has a problem because we need not do the follow-up investigation to look behind that registration. As long as there has been a registration that has followed the normal requirements that Landgate has in process, sufficient legal ownership of the property is provided. However, that in itself creates the problem that has brought this motion to the house today, which is that the system of so-called security of tenure comes about with the doctrine of indefeasibility of title, but which of course is a misnomer. So, yes, the minister has today outlined a number of measures that, if implemented properly, should go a long way to alleviate and prevent a repeat of this terrible incident for the third time or more in Western Australia. Of course, the proof will be in the pudding or, more importantly, in the outcome of the processes the minister has implemented today. However, as I also stated, it is very important that a proper educational program be put in place, not only for people who may live overseas, but also for people who live in Western Australia, as there is no reason that this incident may not be initiated in Western Australia itself. It does not have to be initiated overseas. With those few words, I dearly hope that the measures the minister outlined are implemented in an efficient and prudent way and that he takes up the idea of an extensive educational program.

Question put and a division taken with the following result —

Extract from *Hansard*
[ASSEMBLY — Wednesday, 17 August 2011]
p6049b-6060a

Mr John Hyde; Acting Speaker; Mr Brendon Grylls; Dr Tony Buti

Ayes (22)

Ms L.L. Baker
Dr A.D. Buti
Ms J.M. Freeman
Mr J.N. Hyde
Mr J.C. Kobelke
Mr F.M. Logan

Mr M. McGowan
Mr M.P. Murray
Mr P. Papalia
Mr J.R. Quigley
Ms M.M. Quirk
Mr E.S. Ripper

Mrs M.H. Roberts
Ms R. Saffioti
Mr T.G. Stephens
Mr C.J. Tallentire
Mr P.C. Tinley
Mr A.J. Waddell

Mr P.B. Watson
Mr M.P. Whitely
Mr B.S. Wyatt
Mr D.A. Templeman (*Teller*)

Noes (26)

Mr P. Abetz
Mr F.A. Alban
Mr C.J. Barnett
Mr I.C. Blayney
Mr J.J.M. Bowler
Mr I.M. Britza
Ms A.S. Carles

Mr G.M. Castrilli
Dr E. Constable
Mr M.J. Cowper
Mr J.M. Francis
Mr B.J. Grylls
Mr A.P. Jacob
Dr G.G. Jacobs

Mr R.F. Johnson
Mr A. Krsticevic
Mr J.E. McGrath
Mr W.R. Marmion
Mr P.T. Miles
Ms A.R. Mitchell
Dr M.D. Nahan

Mr C.C. Porter
Mr D.T. Redman
Mr M.W. Sutherland
Mr T.K. Waldron
Mr A.J. Simpson (*Teller*)

Pairs

Mrs C.A. Martin
Mr R.H. Cook
Mr A.P. O’Gorman
Mr W.J. Johnston

Mrs L.M. Harvey
Dr K.D. Hames
Mr T.R. Buswell
Mr J.H.D. Day

Question thus negatived.