

ELECTRONIC CONVEYANCING BILL 2013

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)** on behalf of Hon Ken Baston (Minister for Agriculture and Food), and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [5.07 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce this bill, which facilitates the adoption in Western Australia of national electronic conveyancing, a national scheme for the electronic lodgement and processing of conveyancing transactions. The state is committed to implementing national electronic conveyancing under the Council of Australian Governments National Partnership Agreement to Deliver a Seamless National Economy 2008 and the Intergovernmental Agreement for an Electronic Conveyancing National Law signed by all Australian states and the Northern Territory. The IGA came into operation on 21 November 2011.

The bill will enact legislation corresponding to the Electronic Conveyancing National Law within Western Australia. It will also make a number of consequential amendments to the Transfer of Land Act 1893, the Settlement Agents Act 1981, the Duties Act 2008 and the Taxation Administration Act 2003 needed to implement national electronic conveyancing in Western Australia. In addition, the bill amends the TLA to reduce the risk of identity fraud and other improper dealings in property transactions by conferring an express statutory power on the Commissioner of Titles and Registrar of Titles to require the conduct of verification of identity and a confirmation of the authority to deal with land. By ensuring that the person transacting the land is the legal owner of that land, the community's confidence in the integrity of the Western Australian land titling system will be maintained.

The object of the national scheme is to promote efficiency throughout Australia in real property conveyancing by providing a common legal framework that enables documents to be prepared, lodged and processed in electronic form.

It is important to note that the bill does not derogate from the fundamental principles of the Torrens system, such as the indefeasibility of registered interests and the entitlement to compensation from the state when, for example, a person has suffered a loss because of fraud.

A world-class land administration system: Western Australia has a world-class system for registering and recording interests in freehold land. The processes for recording interests in land impact upon most Western Australians at some time in their lives. For many Western Australians, buying a home is the biggest purchase they will ever make. In the financial year ended 30 June 2013, Landgate received 346 610 documents for registration. Of those, 87 584 were transfers, with a total value of approximately \$43.8 billion, and 96 517 were mortgages.

Traditionally, conveyancing has been accomplished via the physical exchange of paper documents and cheques between the relevant parties prior to the physical lodgement of the necessary documentation with Landgate. If the property is to be mortgaged with a financial institution providing funds for the purchase, settlement generally must take place in Perth. This requires all the relevant parties, or their agents, to be physically present in the same place at the same time for the exchange of documents. It also requires the physical lodgement of documents with Landgate at its Perth, Midland or Bunbury premises. This generally imposes significant additional costs on the parties, particularly if one or more of them are from regional Western Australia.

National electronic conveyancing: National electronic conveyancing will enable legal practitioners, conveyancers and financial institutions to use electronic online processes to prepare the conveyancing documents, settle the financial aspects of a transaction and lodge land registry documents electronically.

The benefits of electronic conveyancing: The process for updating the titles register has historically been paper-based, although over the past 25 years there has been the creation of electronic systems and an electronic land titles register at Landgate. In Western Australia the journey towards electronic conveyancing commenced in 1997 when Landgate commenced the implementation of digital certificates of title and a digital title register. The introduction of this bill is a significant enabling step in that journey. An electronic system of conveyancing will remove inefficiencies and enable business processes to be streamlined both in the conveyancing industry in Western Australia and at Landgate. For example, title data will be pre-populated into electronic registry instruments from the titles register, saving data entry and reducing errors in and requisitions relating to documents. Settlements will be organised electronically and physical attendance at settlement will not be

necessary. Paper registry instruments will not need to be mailed or sent by courier to clients for witnessing and signing. Bank cheques will not be required to pay funds at settlement.

An independent study has estimated that the savings associated with national electronic conveyancing in the period from 2011 to 2028 will exceed costs by \$580 million in net present value terms. Based on this study, as Western Australian property transactions represent about 14 per cent of all transactions anticipated to be completed electronically, the benefits to financial institutions, solicitors, conveyancers, purchasers, vendors and the State of Western Australia over this period are expected to be in the order of approximately \$80 million.

The model law: Under the intergovernmental agreement, the states and the Northern Territory have agreed to pass legislation adopting or corresponding to the agreed model law. This will ensure that the relevant processes will be largely the same across all jurisdictions. This will enable the same information technology system to be used for electronic conveyancing across Australia. This uniformity of approach offers subscribers to an electronic lodgement network, such as conveyancers, law firms and financial institutions, significant cost savings. The model law has already been enacted in New South Wales, Victoria, Queensland, Tasmania and the Northern Territory.

Features of the model law: The model law enables the registrar of titles in each jurisdiction—in Western Australia, Landgate—to authorise the operation of an electronic lodgement network and provides for the making of rules for the operation of that network, known as operating requirements, and participation rules for its use by subscribers. The model law will enable Landgate to receive, process and register electronic registry instruments received via an electronic lodgement network with the same legal effect as lodging and registering paper instruments.

The model law also provides for the digital signing of electronic documents by subscribers to the electronic lodgement network, either in their own right or on behalf of clients. By entering into an approved form of client authorisation, a transacting party authorises a subscriber to digitally sign and lodge electronic registry instruments for them with the relevant land registry and authorise any financial settlement involved in the transaction. The financial settlement component of the system is not referred to in the model law as it is subject to existing regulatory oversight by the Reserve Bank, the Australian Prudential Regulation Authority and/or the Australian Securities and Investments Commission. In order for the various parties to a conveyancing transaction to be able to rely on a digital signature, the model law contains an attribution rule. This rule provides that a subscriber is taken to have signed an electronic document unless the subscriber can prove that the digital signature was not created by the subscriber or one of its employees, agents, officers or contractors acting on its express or implied authority. Additionally, the subscriber would need to prove that the creation of the digital signature did not occur as a result of it breaching the participation rules or being negligent. This does not prevent a subscriber from unsigning—that is, removing—its digital signature prior to settlement and lodgement of a transaction.

The model law also provides that an appeal can be brought against specified administrative decisions. Appeals in Western Australia will be to the State Administrative Tribunal.

The model law was drafted in consultation with officials from each state and territory. There was also extensive consultation with relevant stakeholders, including conveyancers, the legal profession and financial institutions, in drafting the model law and the amendments set out in the bill. As part of the consultation processes on the model law, a draft of the model law, together with a commonwealth consultation regulation impact statement, was released for public comment in July 2012, and comments received from stakeholders were considered in determining the content of the final version of the model law.

A national electronic conveyancing system: A private company, known as NECDL—National E-Conveyancing Development Ltd—has been established and will operate Australia’s first electronic lodgement network. The system is known as PEXA—Property Exchange Australia. Western Australia, Victoria, New South Wales and Queensland established and were initial investors in NECDL. The four major financial institutions, the ANZ Bank, the Commonwealth Bank, the National Australia Bank and Westpac Bank, subsequently invested in the company, along with other private sector investors. The state, through Landgate, has a 15.9 per cent shareholding in NECDL and has invested a total of \$22.4 million. The shareholder benefits that this investment is expected to return to the state, together with the business efficiency reforms that a digital platform for conveyancing, funds settlement and lodgement of documents will deliver to Landgate and the conveyancing industry, are significant.

Electronic conveyancing system implementation time line: PEXA began processing electronic conveyancing transactions under the new scheme in Victoria in June 2013 and in New South Wales in October 2013 with the respective land registries and three of the four major Australian banks. Subject to the passing of this bill, Landgate and PEXA are expected to begin processing electronic conveyancing transactions in Western Australia in early 2014. PEXA will initially process the lodgement of mortgages and discharges of mortgage, followed by

transfers of land, caveats and withdrawals of caveats later in 2014. The existing paper-based conveyancing process will continue to be available for use in Western Australia after the implementation of this legislation. The retention of paper-based conveyancing means that law firms, conveyancers and financial institutions that do not already use electronic conveyancing can transition to electronic conveyancing at their own pace.

In conclusion, the Electronic Conveyancing Bill 2013 will facilitate a more efficient system for conveyancing interests in land that will benefit Western Australians. Electronic processes offer many benefits and it is appropriate that these benefits be available to the numerous Western Australians who are involved in property transactions each year.

Pursuant to Legislative Council standing order 126(1), I advise that this bill is a uniform legislation bill. It is a bill that ratifies or gives effect to an intergovernmental or multilateral agreement to which the government of the state is a party.

I commend the bill to the house and table the explanatory memorandum.

[See paper 1111.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.