

TRANSFER OF LAND AMENDMENT BILL 2001

Second Reading

Resumed from an earlier stage of the sitting.

HON GEORGE CASH (North Metropolitan) [5.33 pm]: I was discussing the purposes of the Bill and my comments were made in respect of that. The Bill before the House will amend the Transfer of Land Act 1893. It is fair to say that, given the significant changes in the use of electronic commerce as a means of business transactions, it is incumbent on the Department of Land Administration to update its systems to create a digital title registrar and a system of online digital processing of its land transactions. There is no doubt that the proposals contained in the Bill will continue the work of SmartRegister, which is an ongoing DOLA project and has been a project of DOLA for some years. In fact, the current amendments before the House were approved by the previous Government in August 1999. The 1996 amendments to the Transfer of Land Act were approved in May 1993. I make the point that it seems a long time, when we are dealing with amendments to the Transfer of Land Act, for them to have come before the Parliament and then be dealt with by the Parliament. That is regrettable in itself, given the importance of the operations of DOLA, inasmuch as it is the repository of the land information and title system in Western Australia. Part of those 1996 amendments dealt with modernising the register. Section 48 of the Transfer of Land Act was amended to enable DOLA to modernise the register and registration practices by permitting the Registrar of Titles to store original certificates of title in a form other than on paper. They were able to be stored in any medium or media that was to be determined by the registrar. The 1996 amendments also allowed the registrar to take advantage of new technology, which allowed for the storage of titles and instruments in an electronic register. This Bill, therefore, is a continuation of the various amendments that have been made to the Transfer of Land Act to enable electronic registration of various conveyancing and general registration instruments or documents.

In November 2001, soon after the Bill was said to be coming up for discussion in the Legislative Assembly, I took the opportunity to visit DOLA's headquarters in Midland to be briefed on the impact of the Bill. I spent some time with senior officers of DOLA, who showed me the data collection schemes that were then operating to capture data to be fed into the system. I was also shown examples of digital processing of dealings on that day. Those discussions that I had at DOLA, and the opportunity to go through the operations there, gave me some confidence in what is being proposed in the Bill in a practical sense, inasmuch as I had practical experience of what is being proposed in the Bill before the House.

As I indicated earlier, soon after I visited DOLA in November 2001, believing the Bill would come up for debate in the Legislative Council in early 2002, I took the opportunity to go to Sydney to meet with various senior officers of the New South Wales Land and Property Information office. I mentioned that I met with David Mulcahy, the Director of Land Titles and Registrar-General of the Land and Property Information office. I also met with Mr Barry Douse, who is the Divisional Manager Production and Business Development; Mr Doug Walsham, Divisional Manager Titling and Registry Services; and Mr John Buchanan, Manager Document Registration Services. Each officer showed me their areas of responsibility in New South Wales and advised me of the success of the system they had developed there. Other Australian States and Territories, including Queensland, South Australia, Tasmania and the Northern Territory, have digital registration systems in place. Victoria is well on the way, although its system is still only partly completed. Other countries that have moved towards digital registration include Singapore, Scotland and most Canadian provinces.

It is fair to say that an analysis of the amendments contained in the Bill indicate that the proposed system in practical terms is designed to enable, firstly, an improvement in document registration turnaround times; secondly, improved search information turnaround times; and thirdly, greater internal productivity; fourthly, and very importantly, it represents an addition to the base that exists so that DOLA can build for the future on advances that are occurring in technology.

As part of the explanation given for the Bill, and as was mentioned during my visit to DOLA in 2001, DOLA indicated that it hoped to develop digital registration to permit the creation of an electronic conveyancing system as an add-on to the proposed digital system. The proposed amendments will allow the operational changes necessary to run a dual digital and paper title system during the conversion period. It is important to note that the current system is paper-based and that we are moving towards a digital system. However, I was advised that given the hundreds of thousands of documents - it may run into millions but I will stick with hundreds of thousands - that will be subject to this change, it would take 18 months to capture about 92 per cent of the current paper system and enable it to be converted to a digital registration system; and it would be necessary for DOLA to run a dual system while it was moving across to the digital system. In due course the parliamentary secretary may be able to tell me how much information has been captured to date. The reason I say that is that I am using 2001 figures, which may have changed. However, I thought that DOLA's intimation that 92 per cent of the data could be captured within an 18-month period seemed to be fairly ambitious at that stage.

Hon Graham Giffard: I can tell you by interjection that I have spoken to Mr Bruce Roberts from DOLA, and it is up to 93 per cent.

Hon GEORGE CASH: DOLA is certainly on target, and that is pleasing to hear. The difficulty that it will face, of course, is that the last seven per cent will take a lot longer. That is due to the complexity of land ownership and the estate in which that land is held. As part of the parliamentary secretary's comments in due course, I will be interested if he can give an indication of how long DOLA thinks that last seven per cent will take. It will be an estimate or a guesstimate, because it will be the very complex documents that need to be captured. However, it will be interesting to know the sort of projections DOLA has regarding that complex information. New South Wales is still capturing some of the old complex information, for the reasons that DOLA will face with the last seven per cent or so of its information.

The digital technology that is envisaged will enable certificates of title to be produced that will have the usual land tenure information. Those who have certificates of title will know that they indicate interests and encumbrances such as the ownership of the land, mortgages, charges, leases, easements etc. These interests and encumbrances will be subject to the usual state guarantee of indefeasibility of title - I refer to section 201 of the Transfer of Land Act, part XII, which deals with actions and remedies. However, the new certificates of title will also be able to provide additional information. Sometimes that additional information is referred to as below-the-line information. Clearly, that will not be subject to the state guarantee. Examples of that additional information could include such supplementary information as street addresses, the name of the local authority, fire department coordinates, house numbers and that type of information, which may be useful to someone who is making inquiries about a parcel of land.

Members will no doubt be aware that currently the paper system certificate of title has recorded on it the interests that previously affected the land, even though this information may have been cancelled or superseded. It is fair to say that on some certificates of title that additional information, all of which I suggest is extremely important and generally relates to the history of encumbrances and ownership, can make a certificate of title difficult to read when trying to ascertain the current interests affecting the land. I am sure that most members in this place will have had certificates of title that they have had reason to study to work out the current encumbrances and ownership particulars. When there is a significant amount of superseded or cancelled information, it is sometimes difficult to ascertain the current information. Of course, if a mistake is made with encumbrances, that can cause significant problems for solicitors, settlement agents or others who are warranting a state of affairs of a certificate of title.

The new digital system will enable the production of a certificate of title showing only the current interests affecting the land, and the history affecting the certificate of title will be kept in a digital base behind the current CT. When I say "kept in a digital base", I mean that it will be able to be searched, if required, and will certainly remain part of the public register.

The other area of interest is the change whereby digital titles will refer to digital survey plans. The digital CTs will not have a sketch of the land incorporated into the certificate of title but will refer to the legal survey plan; that is, either the digital survey plan or the sketch of the relevant land on the superseded CT. Members will be aware that a survey plan is a more accurate representation of the spatial dimensions of land, and is able to put the land in context with the wider subdivision of adjoining lands.

One of the other purposes of the Bill, as I indicated, is to provide an alternative method of subdivision using disposition statements. This will eliminate the need for a number of transfers when the land is held in common ownership and is to be transferred by way of newly created lots, in agreed shares, comprising separate lots. As members will be aware, the current system requires land in multiple ownership to be transferred into one ownership and then further transferred to reflect the newly created lots. Obviously, any subdivision will still require the usual planning approvals, as the proposal before the House is only an amendment to reduce the need for multiple transfers among common owners - this relates to the Transfer of Land Act.

Some of the other provisions covered by the Bill include an amendment to repeal a number of provisions in the Married Women's Property Act 1892 as it applies to section 20 of the Transfer of Land Act. This amendment refers to land alienated before 1 July 1875 and brought under the operations of the Transfer of Land Act.

The amendments before the House also provide for the appointment of more than one Deputy Commissioner of Titles. That in itself is interesting in so much as when the first commissioner and deputy commissioner positions were created by the Parliament, the Titles Office, as it was then, was dealing with only a limited number of transactions each year. I am talking about a system more than 100 years old. Development has progressed in Western Australia over that time, and DOLA now processes about 326 000 transactions a year compared with the situation when the Act came into operation in 1893. Clearly, greater flexibility and more effective use of executive resources are needed. I should say by way of interest that the New South Wales titles office now deals with in excess of 900 000 transactions a year. It is waiting to break through the million transaction mark, so to

speak. Western Australia has a little further to go. However, that indicates the significant changes that have occurred in titles office processes and volumes over a period.

Currently, if the Commissioner of Titles and the deputy commissioner are on leave or absent from their office, their respective work flows can be affected, unless we provide for the Governor to appoint another deputy commissioner. That is contained within the Bill whereby it proposes that there be a capacity to appoint more than one Deputy Commissioner of Titles.

It is also intended to amend the Evidence Act 1906 to include the Deputy Commissioner of Titles as a person of whose signature judicial notice is required to be taken. It is also intended to remove a reference to a deputy registrar of titles as there is no longer such a position. That title is to be replaced with that of Assistant Registrar of Titles to bring it into line with the current practice at the Department of Land Administration and the nomenclature that is used in that office within DOLA.

Members will be interested to see that section 192 of the Transfer of Land Act also is to be amended. The amendment will allow a prescribed amount of a document lodgment fee to be imposed as a penalty when someone who presents documents to DOLA fails to correct errors within the relevant notice period. The current document lodgment fee is \$75, and at the moment section 192 requires half of that amount to be paid as a penalty should a penalty be applied. This amount is to be changed to a prescribed amount in an effort to reduce the number of errors in documents that are lodged with DOLA. Obviously, when the statutory penalty of 50 per cent of the lodgment fee is changed to a prescribed amount, it is important to ascertain just what that amount might be. I am advised by DOLA that the penalty is to be increased to 75 per cent of the lodgment fee, rather than the current 50 per cent, which means that the current penalty will increase from \$37.50 to \$56.25. I was interested to learn that DOLA estimates that currently there is approximately a 10 per cent error rate in documents that are presented. It is hoped that the increase in the penalty will reduce this error rate significantly. I note also that in some cases a number of solicitors who act in the conveyancing area and certainly some settlement agents and other conveyancing agents have found it convenient to lodge their documents with DOLA, allow DOLA to find the mistake and then pay a nominal \$37.50 fee to rectify the error. That is obviously an impost on DOLA's time. It is obviously much better for those people who present documents to DOLA to present them without error. I am told that DOLA has discussed the proposed amendments with the Law Society of Western Australia, settlement agents and various conveyancing groups within Western Australia and they all support the changes. As I said before, these changes have been in the pipeline for a considerable period. From my discussions with various persons associated with those organisations, I know that they are keen that this legislation proceed.

I think it is fair to say that when one looks at the nature of the global economy and of the multitude of business transactions that rely on electronic means to lodge data and record transactions and changes to transactions, there is no doubt that the electronic age is well and truly with us. These amendments are in fact driven by technology, but that technology is necessary and indeed will assist DOLA in carrying out the important functions it is required to perform on behalf of the community. I am sure that the upgrading of the system at DOLA will enable greater opportunities in the use of electronic conveyancing, which will unquestionably continue at a rapid pace. It is fair to say that so long as the appropriate security systems are in place to cope with the changes in electronic conveyancing, this should enable the greater accuracy and faster and more efficient processing of land transactions. It is also fair to say that the most significant problem to be overcome will be what are perceived as significant security concerns surrounding the unlawful accessing of the central database. This is an area of challenge for DOLA. DOLA must meet that challenge if there is to be confidence in the land registration and conveyancing system in Western Australia. However, more than that, I believe that DOLA is unquestionably capable of meeting that challenge. There are a number of arguments that suggest that the current paper system is more likely to be the subject of fraud than the proposed digital system; that is, there is technology that can provide greater security for a digital system than for the current paper system. However, many people in the community are still wary about the security of the digital systems and generally the security of records that are maintained by electronic means.

I will give the parliamentary secretary notice of a number of issues that should be discussed during the committee stage so that we do not unduly waste time. The parliamentary secretary might be able to address these issues during his summing up. I am interested in what checks and balances have been incorporated into the DOLA system to prevent hackers getting access to the system and interfering with individual property interests. The parliamentary secretary has mentioned to me that the volume of data capture is now up to 93 per cent, so that question becomes redundant. I am interested in why clause 2 provides for separate days on which various provisions of the Bill will come into operation. There must be something in the contemplation or mind of the Government to stagger the commencement period. I am interested in whether there is a need for a legislative amendment to cover some areas. I am also interested in whether digital signatures will be recognised as part of these amendments or by further amendments, and whether there is any need for additional attestation

requirements for the witnessing of documents. However, I will take up those matters during the committee stage. With those comments, I indicate the Opposition's support for the Bill.

Sitting suspended from 6.00 to 7.30 pm

HON GRAHAM GIFFARD (North Metropolitan - Parliamentary Secretary) [7.33 pm]: Prior to the dinner suspension Hon George Cash raised a number of issues that I will now address. The first related to how long it would take to capture the last seven per cent of the data, confirming that 93 per cent of the data is being captured. When asking that question he alluded to the fact that the final seven per cent of the data is likely to be more involved and complicated; and he is correct, those titles are more complex. That seven per cent covers multi-tenure and multi-lot titles, mineral titles, Cocos Islands and Christmas Island titles and purple titles. At this stage there are no computer solutions to those titles in Australia. The short answer to the question is that they will be completed once a solution is found for capturing the seven per cent.

Hon George Cash also asked about checks and balances to prevent hackers. I have some advice here and I wish to be faithful to the information on this sheet because I do not want to change its meaning. Electronic title security is similar to paper title security in the Department of Land Administration, in that DOLA holds the original record and the duplicate certificate of title is held by the relevant interest. The original record is held in a secure computer environment rather than a secure storage area. A user ID and password system controls all access to the DOLA information technology network. Access is monitored and passwords expire monthly. There is no direct access to the electronic title server for external and Internet users. Key title information is copied to a separate dissemination server that allows access to external users and prevents access to original data. The computer systems containing the electronic titles database are secured in an offsite computer facility that has controlled access. Only authorised staff is afforded access to this computer facility. The computer facility is manned 24 hours per day and is equipped with an uninterrupted power source that allows the systems to continue to function in the event of a power failure.

I am advised that two issues arise in relation to the staggered dates to which Hon George Cash alluded in clause 2(2), and they relate to the need to bring into effect provisions for disposition statements. Those provisions will be deferred for approximately three months, until regulations that support and apply to them are put in place. The same situation applies to provisions relating to fees, which will also require supporting regulations. Other than those two issues, no further delays are intended.

The next question was whether digital signatures will be recognised. Clause 8 of the Bill, which seeks to amend section 14 of the Act, sets out that, yes, the legislation will permit a digital signature of the registrar on title documents and any graphics. The next question was whether the Government will commission the deputy commissioners. I am advised that the deputy commissioners will be appointed, that is, they will be proposed to the minister who will then put the appointment to the Executive Council for approval by the Governor.

Hon George Cash asked me during the break what would happen if the system goes down. At one extreme the system is able to be brought back online within three days because there is a warm site off-site in East Perth. I suppose in that event the warm site would become a hot site. If on the rare occasion the system goes down for a day, currently people cannot search for titles. People currently search for what is called an image title. The Bill will not address the inconvenience of people who want or need to search for titles. It is recognised that it is an existing problem that occurs from time to time and that, regrettably, this Bill will not solve it. If the current system of imaging goes down or the digital system goes down, it will require rectification. However, I am advised that on the occasions when the system does go down, the Department of Land Administration has a rapid response system for getting the whole system back online.

As for further attestation for signature requirements, DOLA will still require the lodgment of paper documents. That will mean the usual witness or attestation requirements when people are lodging documents. DOLA is looking to the future and how it can develop and improve the system with electronic lodgments. This Bill does not facilitate it, but one of the issues that arises with electronic lodgments is that of electronic or digital signatures. When the next draft of legislation comes in, that will be one of the issues that are addressed in the legislation.

Hon Ray Halligan interjected.

Hon GRAHAM GIFFARD: It is for electronic lodgments and conveyancing.

Hon Ken Travers: That would be under the electronic transaction legislation.

Hon GRAHAM GIFFARD: I am advised that DOLA still requires the lodgment of paper documents.

Those are the issues that have so far been identified. I thank Hon George Cash for indicating his support for the Bill and I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Jon Ford) in the Chair; Hon Graham Giffard (Parliamentary Secretary) in charge of the Bill.

Clause 1: Short title -

Hon GEORGE CASH: I am obliged to the parliamentary secretary for the information he has provided in answer to the questions that I asked during the second reading stage of the Bill. In respect of clause 2, I understand the answers that the parliamentary secretary has given to the question on the need to stagger the commencement dates of certain clauses. However, it would be interesting to know within six months of the expiration of the assent of the Bill generally which sections have not been brought into operation. The parliamentary secretary has said that he believes that deferred sections will come into operation within three months. I am not asking the parliamentary secretary to do anything at this stage, but I might take it upon myself in six months to ask whether there are any outstanding clauses and the reasons for it, but it is not a matter of great consequence at this stage of the game.

The reason I am interested in any clauses that might be outstanding is that from time to time we pass Bills in this place when we agree that different commencement dates can be fixed for different provisions. Right across the legislative structure in Western Australia a number of sections in Acts have never come into operation. There are questions in respect of the Parliament of why that should be the case. If the Parliament is agreeing to something, it believes in good faith that the provision will come into being in a reasonable time. I accept completely what the parliamentary secretary has said in respect of clause 2, but I raise that issue in respect of other Acts.

I am using clause 1 as an opportunity to confirm the information provided by the parliamentary secretary, because by doing so it will save me going to those clauses in a moment. Under clause 5, I agree that the Governor is required to appoint a deputy commissioner. We recognise that the amendment will provide for additional deputy commissioners. I raise again the question of security. I am not sure that I fully understand the technicalities associated with providing adequate security to the system. That is not the fault of the parliamentary secretary, but because I do not sufficiently understand computer systems. I would venture to say that I am probably like most people of my age group - that is, those who are older than 25 years - who do not fully understand computer systems. I will let that one go for the time being in the hope that we have a secure system. I am quite sure that it is DOLA's intention that we have a secure system.

That concludes my comments on clause 1. The next clause to which I would like to speak in due course is clause 9.

Hon GRAHAM GIFFARD: I do not want to speak too long on the question of security for fear of tampering with the explanation that is being provided, but, as I understand it, essentially there will be the digital titles computer information and a copy. People will have access to the copy but they will not have access to the original. Access to the computer with the original digital titles will be heavily restricted by the use of changing passwords and such things. That separation will enhance the security of the system. I understand that it is conceptualised as two blocks. That probably helps people to understand it.

Clause put and passed.

Clauses 2 to 8 put and passed.

Clause 9: Section 20 amended -

Hon GEORGE CASH: This clause proposes to delete from section 20 of the Transfer of Land Act certain words that affect married women. I have no objection to that proposal. However, will it be necessary to amend the Married Women's Property Act 1892 as a consequence of this change?

Hon GRAHAM GIFFARD: I am advised that has been investigated and there is no need.

Clause put and passed.

Clauses 10 to 12 put and passed.

Clause 13: Section 48 amended -

Hon JIM SCOTT: Proposed section 48(1) states -

The Registrar shall cause to be maintained for the purposes of this Act a Register comprising -

- (a) all registered certificates of title;

- (b) in relation to land that is the subject of a digital title, a record of the endorsements of the particulars of all dealings and matters . . .

Will this include any encumbrances that may have been placed on a title by a court? I have heard of instances in which the Family Court has ordered that an encumbrance be placed on a property to prevent it from being sold but the encumbrance has been removed and the dealing has slipped through without the principal party's knowledge. Will that sort of information be stored digitally on the title?

Hon GRAHAM GIFFARD: All of the information about court orders that would have been provided on the paper title will be provided on the digital title, so the answer is yes.

Clause put and passed.

Clauses 14 to 79 put and passed.

Clause 80: Section 239 replaced -

Hon GEORGE CASH: This clause proposes to repeal existing section 239 and insert a new section 239 headed "Inspection of the Register and related documents; copies and print-outs". Will any fewer documents be made available under the new system than were made available under the present system?

Hon GRAHAM GIFFARD: No.

Hon GEORGE CASH: I again ask the question about the security of the title, but in a different form. During the dinner suspension I had the opportunity of speaking with the parliamentary secretary, and I raised the instance in which a person may attend the titles office to effect a settlement but the DOLA computer system is down and as a result the settlement cannot be effected. On the assumption that time is the essence of the contract, the purchaser might find that the vendor rescinds the contract because settlement did not take place as previously agreed under the contract. If the DOLA computer were down and no search could be made of the digital system, what would be the position of a prospective purchaser? This is an important question, because instances such as this have occurred in the eastern States and cases have been decided on the impact on purchasers when time has been the essence of the contract. The parliamentary secretary has said that if the breakdown is for only 24 hours, the DOLA computer system will be repaired within that 24-hour period; however, if it is a three-day breakdown, the computer system that operates in East Perth will come into operation and people will still be able to get the information they require. Computers do break down, and such a breakdown may have a substantial effect on a person who is involved in a contract. I recognise that because the existing system is a paper-based system, it is physically possible to go into the DOLA vaults and take the paper title and the transfer, mortgage or lease documents off the shelf. That will not be possible if the computer system breaks down and only the digital system is in place. Have we made some progress on that issue?

Hon GRAHAM GIFFARD: I am advised that the officers from the Department of Land Administration are aware of the case in the eastern States to which Hon George Cash alluded. In that case the court decided that when time was of the essence and the equipment in the land titles office had broken down, time was suspended until the system was operational and the court relieved the purchaser in that instance of the obligation. This legislation does not have a provision covering that instance. I am advised that if such an event occurred in Western Australia and the parties found themselves in court over it, they could rely on the Queensland case as an authority. However, this legislation does not have provisions that address that particular circumstance.

Hon PETER FOSS: Hon George Cash raised a very interesting point. I am concerned about some changes that have occurred over the years from the purity of the Torrens title system, as originally envisaged, until now. I hate to mention it, but when I started work in law, the method by which settlements took place involved going to the land titles office with the documents, checking them physically against the original title, lodging the documents with an assessor and the assessor then going through the documents and issuing an assessment, which was the fee payable to the titles office. When the fee was paid, the transaction was then carried out. A number of things happened. When we had all the documents together, we went upstairs and whacked them through the time clock, which was the time entered on the title when the transaction took place. That time indicated the priority. It was very difficult for two people to have priority because we had to have certain pieces of paper so that two people could not have priority at the same time. Only when we got the assessment did we hand over the cheque. Therefore, settlement took place at the titles office on the handing over of a bank cheque to pay for the assessment. That was the transaction; it was real Torrens system stuff. There was no possibility of any gap in time between the settlement and protection under the Torrens system.

When the law changed to allow settlements to take place in lawyers' offices and with a check search having taken place just prior to settlement, there was always a theoretical possibility of a gap between making the search and being able to lodge the documents when all sorts of things could happen. As it turned out, nothing much has happened over the years and none of the things happened that we all feared would happen. However, I presume

there will continue to be a capacity to prioritise documents at the titles office although the digital system may be down. I presume the whole system does not come to a screaming halt when the digital system is down. In other words, if a check search has been done, settlement has taken place at the lawyer's office and the documents have been time-stamped at the titles office, priority would still be given although the titles office may not be able to enter the transaction for three days.

Hon GRAHAM GIFFARD: The short answer is yes. In the event that the system went down, documents would still be able to be lodged and be given priority. The "accept" in the system would still remain active. The documents would be stamped with a code indicating the date and the time down to the second that the documents were lodged. Therefore, the system would still be able to give priority and accept documents.

Hon GEORGE CASH: Again on that subject, I understand the comments that the parliamentary secretary has made. I trust that we were talking about the same case. The case I referred to was *Imperial Bros Pty Ltd v Ronim Pty Ltd* in the Queensland Court of Appeal, reported in 1999, volume 2, *Queensland Reports*, page 172. It is interesting to note that when the court considered the issue, it ultimately held that the obligation to complete the contract was suspended when, through no fault of the parties, the departmental computer was inoperative. The court, as a consequence, inserted an implied term to give effect to the principle on which it ruled. I understand that the parliamentary secretary said that that case would probably be used as a precedent for other people who found themselves in the same position.

However, I raise the issue of a purchaser who finds that a vendor has rescinded a contract on the basis that settlement did not take place on a particular date as previously agreed because DOLA's computer was not working. Rather than have vendors and purchasers put in a position of doubt - unless they are aware of the result of the Queensland case - should we not consider a legislative change in the future to put that question beyond doubt? I am not suggesting by any means that we do it now because, as I understand it, we have not faced that problem yet in Western Australia. However, as I said earlier in my comments in the second reading debate, whether or not we like it, the electronic world surges forward and we are part of it. Challenges will face DOLA as a result of the changes in electronic business transactions and I am sure that at some stage vendors will attempt to rescind contracts when purchasers do not settle on due dates specifically due to DOLA's computer being down.

I leave that matter with the parliamentary secretary, as it is an issue for the future. I am sure his senior advisers have given it some thought. The issue of titles office procedure is talked about in the digital world. There may be other instances such as this that have been raised in other eastern States. However, DOLA may wish to consider that issue when it next deals with amendments to the Transfer of Land Act. I do not know whether we should insert a statutory provision in the Act to cover that situation because the courts have already considered the issue. Given the precedent that has been set, the courts have a certain flexibility depending on the circumstances; whereas, when it is in statutory form it becomes inflexible. However, I raise the issue because it will have to be faced in due course. The facts of the Queensland case were that Imperial agreed to sell a property to Ronim for about \$3.5 million. Completion was to be effected at a time and place agreed by the parties. The time for completion was to be between nine and five on the date for completion. The contract provided expressly that time was of the essence. When the purchaser attended the titles office to settle the matter, his solicitor found that the titles office computer was down. Settlement did not take place on the agreed day and, as a result of that, the vendor rescinded the contract the next morning on the basis that it was not settled within the time period stipulated. The purchaser, no doubt upset, attempted to explain that the titles office computer in Queensland was down. In the end the matter proceeded to court, and on the facts presented, the court implied a term into the contract that enabled the purchaser to complete settlement of the matter. That is a very brief description of the case. I am sure the senior officers of the Department of Land Administration are aware of this. It is an issue that we will have to face up to at some stage.

Hon GRAHAM GIFFARD: Yes, I am advised that we are talking about the same case. I acknowledge the point, which is a good point.

Clause put and passed.

Clauses 81 to 84 put and passed.

Clause 85: Consequential amendments to the Evidence Act 1906 -

Hon GEORGE CASH: This clause deals with consequential amendments to the Evidence Act 1906. It states that section 56(b) of the Evidence Act 1906 is amended by deleting "Assistant or Deputy Registrar" and inserting instead "Deputy Commissioner of Titles or Assistant Registrar". Why is that required? I also note that the fifth schedule of the Evidence Act 1906 is being amended by deleting "Deputy" and inserting instead "Assistant". Why is that required? Schedule 5 of the Evidence Act relates to section 61 of the Evidence Act,

which deals with the proof of proclamations and regulations. Why does the Evidence Act need to be amended? I would be pleased to have the parliamentary secretary's advice.

Hon GRAHAM GIFFARD: I am advised that clause 85(1) and (2) correct errors. There was never a deputy registrar of titles; there was always an Assistant Registrar of Titles. Therefore, the clause corrects that. It also provides that judicial notice is taken of the -

Hon Peter Foss: There was never a deputy registrar of titles?

Hon GRAHAM GIFFARD: It was always the Assistant Registrar of Titles.

Hon George Cash: I thought there was a deputy.

Hon GRAHAM GIFFARD: I am advised that there was not a deputy registrar of titles; there was an Assistant Registrar of Titles.

Hon Peter Foss: There were lots of assistant registrars.

Hon GRAHAM GIFFARD: Yes, but the schedule refers to "Deputy" and it is not "Deputy"; it is "Assistant". That is the advice I have received.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Graham Giffard (Parliamentary Secretary), and passed.