

TRANSFER OF LAND AMENDMENT BILL 2021

Second Reading

Resumed from 18 May.

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.47 pm] — in reply: I had one minute to begin my reply to the second reading debate when the house last considered this bill on 18 May. I had already thanked Hon Neil Thomson for his contribution and for his indication of the opposition's support for the Transfer of Land Amendment Bill 2021. There was a theme running through the issues raised by the honourable member in his comments. The first issue was whether there was benefit to the consumer. This bill is about bringing conveyancing into the twenty-first century, further enabling the Western Australian land titles register to operate in an electronic environment and simplifying the handling procedures for the property industry, which includes the associated benefits being passed on to individuals and families who are transacting on land.

The amendments will significantly reduce the time frames associated with settlement, greatly benefiting the consumer, with electronic transactions allowing for the registration of documents in mere seconds. During consultation on the bill, stakeholders indicated support for the bill on the basis that the amendments were all seen as being essential to supporting electronic conveyancing and achieving efficiency moving forward. The bill also provides for greater flexibility when registering counterpart documents, and removes the unnecessary administration associated with the production of lost duplicates of titles, resulting in further efficiencies that are passed on to the consumer.

The member also made comments on what he described as “privatisation”; in fact, it was a commercialisation of Landgate's systems that occurred in 2019. That is an interesting point of view for him to have, but it is actually not relevant to this bill, which is about improvements to facilitate the electronic administration of the land titles system. The member also raised the issue of PEXA and interoperability. Again, this bill will amend the law to enable administration of the Torrens title system, and interoperability for electronic conveyancing is separate from this bill.

The bill will make changes to three key areas of the current Transfer of Land Act. Firstly, it will modify the definition of counterpart documents to improve the processing of mortgages electronically. Secondly, it will enable notices served under the Transfer of Land Act to be served electronically. Thirdly, it will remove the requirement to issue and produce duplicate certificates of title, resulting in a greater ability to conduct land transactions in a fully electronic environment. It will also ensure safety in electronic land transactions, so that digitising processes associated with land transactions will not impact on the security of those transactions. The introduction of the verification of identity practice in 2012 provided a safer mechanism to transact land, with parties to the transaction required to verify their identity and their rights to deal with that land. The VOI practice reduces the opportunity for successful land title fraud as a result of identity theft or other improper dealings. It has to be noted that no system of land administration is completely immune to fraud or improper dealings. However, this risk is carefully managed through ongoing process improvements. The electronic environment provides multifactor identification and is more secure.

With respect to duplicate certificates of title, the nature of the existing act is that it is very prescriptive and process-oriented. There are numerous references to “duplicate title” in the existing act, and the majority of the amendments contained in the bill before us will remove those references. Duplicate certificates of title were historically issued as a record of what was in the central land title registry at the time the duplicate was issued, and, historically, a duplicate certificate of title, if issued, would need to be produced by the owner to transact on the land subject to that title. After the Transfer of Land Act was amended in 1996, which paved the way for a digital land register, issuance of a duplicate certificate of title has been optional. Ninety-seven per cent of new mortgages registered in 2020 opted to have no duplicate certificate of title registered with mortgagees, as they were confident that they did not need a duplicate of the title. This amendment forms part of the government's priority to cut red tape to simplify and streamline approvals, and has the potential to deliver time and cost savings for landowners and mortgage holders across the state. It is important to note that duplicate certificates of title will not be removed immediately upon passage of the bill. A public education campaign focusing on the removal of duplicates will be rolled out to raise community and industry awareness, reassure stakeholders of the security of their digital certificate of title and resolve common misconceptions that the duplicate certificate of title is essential to proving land ownership. The education campaign will be supported with industry information sessions, frequently asked questions, information sheets and social media content describing the role and function of duplicate titles and what the changes mean. At the six-month point, Landgate will assess the level of acceptance and determine whether it is appropriate to remove duplicate titles at that point by proclaiming the relevant sections of the legislation.

I am pleased that this bill has cross-party support, as did the previous iteration. This bill has been developed through consultation with stakeholders and has received wide support for developing electronic options for land transactions. The bill will deliver reforms to land conveyancing that have been in development for some time. Members, I am happy to commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon NEIL THOMSON: I thank the minister for clarifying some matters, which has assisted me. I was busily putting some notes together on that. I still have some questions. I will start with the issue of the duplicate certificate of title. Clearly, only a small proportion of agents still use those duplicate certificates of title; from what I can tell, the minister said that 97 per cent of people do not have a duplicate title when there is a settlement. I suppose we are aiming to socialise those conveyancing agents—I assume I am getting this right—who still require or utilise those duplicate titles for some reason. The minister mentioned the education program, which gave me some confidence. I think it was a good clarification of the six-month process that will be undertaken. I have one question on that: will it be the minister's decision to proclaim the part of the act that will remove those duplicate titles?

Hon SUE ELLERY: The Registrar of Titles will make that decision.

Hon NEIL THOMSON: The minister mentioned the education program. I assume that will be carried out in consultation with the industry and peak bodies, along with broad communication among all licensed settlement agents.

Hon SUE ELLERY: Yes; I am advised that there will be broad consultation on that.

Hon NEIL THOMSON: I understand that some agents—we are talking about a small number from what I can gather—are worried because they see duplicate certificates of title as helping to defend themselves against identity theft. The minister mentioned and clarified the other provision that was introduced in 2012. My understanding—I am not disputing that—is that the issue of identity theft was resolved through other amendments. I guess there might be some need to communicate, because some people are still concerned about whether the duplicate title provides some control over identity theft. That may be because people like to have something physical. How does the registrar intend to engage on that specific issue with those few people? I would imagine that those agents who are still operating within that environment could be identified pretty readily; I assume there is a list of people who are still operating with a duplicate certificate of title.

Hon SUE ELLERY: The best answer I can give the member is that that will be incorporated in the education that will be provided. It is also important to recall what I said in my second reading reply, which is the six-month point. It is not an automatic decision at the six-month point; it is an assessment of how the stakeholders are dealing with the changes. An assessment will be made at that point about whether that is the right time to metaphorically flick the switch.

Hon NEIL THOMSON: If constituents, for example, were to raise concerns with a member of this place, how would that be conveyed? Clearly, there will be an education process to reach out to the community and, again, we are dealing with a minority. Will there be some way that anyone in this place, as a member of Parliament, can provide feedback and maybe provide this place with a report on that to satisfy that element within their community who are not satisfied with this process?

Hon SUE ELLERY: I am the representative minister; I am certainly not going to give the member a commitment that the government will provide a report back to Parliament. That is not included in the legislation. As a member of Parliament, as is his right on any issue, he can contact the minister's office and seek assurances, briefings or information if that is what he wants to do. The minister is a helpful minister and I am sure that he will facilitate that if that is what the member needs.

Hon NEIL THOMSON: I assume that the 97 per cent relates to existing transactions that are currently underway.

Hon Sue Ellery: It relates to new mortgages.

Hon NEIL THOMSON: Correct. That is the current practice. I assume that in people's safes or drawers are a bunch of duplicate titles. What will happen to all those when the act is proclaimed?

Hon SUE ELLERY: I am advised that they will be held securely and then destroyed in transactions.

Hon NEIL THOMSON: What does that mean? Can the minister help me here? Who will hold those titles—the physical duplicates? Who will be responsible for ensuring that they are destroyed at the time that they are required to be destroyed and how will that process be managed?

Hon SUE ELLERY: The duplicates will be held by the landowner. As they transact the land, they will hand over the duplicate to the settlement agent, the lawyer or whoever is representing their interests and they will destroy the duplicate certificates.

Hon NEIL THOMSON: So those documents will effectively stay in the system for as long they —

Hon Sue Ellery: Hold the land.

Hon NEIL THOMSON: There is no transaction on the land and this is all about the transaction. The people who have duplicates now will continue to hold those duplicates. Will they have any legal value after the promulgation of the act?

Hon SUE ELLERY: They will have no legal standing.

Hon NEIL THOMSON: That makes a lot of sense. As part of the education program, I assume that some sort of reassurance will be given to those people who might be wedded to paper and think that the duplicate provides them with assurance. Will some sort of communication with the people with duplicate titles be included in the government's campaign?

Hon SUE ELLERY: The education campaign will occur, but the member has to put himself in the shoes of the ordinary landholder who will not pay any attention to this if they are not contemplating transacting the land. There will be some people who, despite the best and most widespread social media or public education campaign, will miss this because it is not pertinent to their life right now. That is human nature. That is how we tend to engage; if it does not matter to us right in the moment, we pay no attention to it no matter how widespread the campaign might be, but it will be done with the best intentions. There will be a public campaign and material will be made available for people so that they can understand the change and what is happening.

Hon NEIL THOMSON: I will not pursue that issue anymore because it is clear. I appreciate the feedback. I am sure that a small number of people might desist. I hope that those who raise concerns are able to engage in the reform process, which we support, and engage with Landgate to have those processes outlined if they need further information. As the Leader of the House mentioned—I used this term in my second reading contribution—there are horror stories pre-2012. The Leader of the House also said that this will have absolutely no bearing on the security. I may be verballing the minister, but I think she said that there is absolutely no bearing on the risks associated with property fraud. Because those duplicate titles will have no value after the promulgation of the act and will have no legal standing, for the record, it is important to get a message through to the community that the security of the system will in no way be affected. Perhaps this is a statement, but I hope that that can be clarified with the promulgation of the act.

Hon SUE ELLERY: I will provide a response. The whole point of this exercise is for members to make a second reading contribution, during which they raise a series of issues, and the minister with charge of the bill responds. Only five minutes ago, I set out a response to the issues the member raised. It is on the record. I have made the points about that. Clause 1 is a finessed debate, but it is not a repeat of the second reading debate. I have responded to the issues raised by the member and they are on the record.

Hon NEIL THOMSON: That is understood.

Another point that the Leader of the House mentioned—I am at risk of getting the same response—is that this has absolutely no bearing on the electronic conveyancing process, for example, PEXA.

Hon Sue Ellery: This is all about the electronic conveyancing process.

Hon NEIL THOMSON: Sorry, should I say the use of PEXA?

Hon Sue Ellery: Yes.

Hon NEIL THOMSON: I want to go into that a bit more. The minister outlined in her commentary in response to my contribution to the second reading debate the benefits that will flow from the proclamation of this bill. The minister's comments were all around the time frames for settlement, including that the registration would take mere seconds and this would achieve efficiencies, putting aside the counterpart documents. So that I am clear, because we are saying that 97 per cent of people do not have counterpart documents already, will these benefits apply to all transactions or just to the three per cent of transactions that are currently done manually?

Hon SUE ELLERY: The amendments will apply to all transactions however they are conducted.

Hon Neil Thomson: The amendments?

Hon SUE ELLERY: Yes, the changes that are before us now.

Hon Neil Thomson: I am asking about the benefits.

Hon SUE ELLERY: The benefits are in the amendments to the act that are in the bill that we are debating right now. If I can help the honourable member —

Hon Neil Thomson: Please.

Hon SUE ELLERY: Please do not get cross at me; I am trying to help you.

Hon Neil Thomson: I won't. We will be friendly today.

Hon SUE ELLERY: Okay. The member will frustrate ministers —

Hon Neil Thomson: We are supporting the bill, by the way.

Hon SUE ELLERY: I know the opposition is.

The member will frustrate ministers if he just repeats questions and asks me to repeat the assurances that I gave him in my second reading reply. If the member wants to canvass how the bill might be improved by amendments or by some technical elements, that can be done broadly in clause 1 and then clause by clause. But, honourable member, I will not keep standing up and repeating what I said when I finished my second reading reply just before five past six. I am not going to repeat it.

Hon NEIL THOMSON: I thank the minister. Just to be clear, I am unlikely to want to go through this clause by clause. We will deal with this in clause 1. To the greatest extent possible, I will not duplicate or repeat anything I have asked, but there may be a need for clarification because these are technical processes. I mentioned in my contribution to the second reading debate that I am not an expert on them, and I am sure the minister is in the same boat. Neither of us is an expert on these technical matters. We have the experts here today, which is great. Just so that I am clear, will all transactions, including those 97 per cent that are currently operating within the electronic conveyancing system, have their processes shortened considerably by the proclamation of this bill? Maybe the minister could help me by explaining how that will occur, because this is a technical part of the bill and I want to understand it. Excuse me for not understanding how that will actually work in a technical sense.

Hon SUE ELLERY: The parent act, the Transfer of Land Act, sets out the framework. The reference I made in my second reading reply to the 97 per cent is at a point in time—now, before this bill has passed—in which 97 per cent of people transacting new mortgages chose not to have a duplicate certificate. Once these changes come into effect, everyone going forward will operate under the new system. The 97 per cent was to explain to the member that right now, under the existing law, 97 per cent are choosing not to have a duplicate certificate. So 97 per cent do not go forward with having a duplicate certificate. The 97 per cent is the percentage of people who have chosen at this point under the current rules how they want to operate, and they have chosen not to have a duplicate certificate.

Hon NEIL THOMSON: I thank the minister. Is it true that this bill will not impact on the 97 per cent?

Hon Sue Ellery: That has already happened.

Hon NEIL THOMSON: This is important for me. If the minister could bear with me for just a moment. Have all the benefits of the electronic system already been captured by whomever is being captured for that 97 per cent?

Hon SUE ELLERY: The 97 per cent is those people at a point in time who have chosen not to have a duplicate certificate. Going forward, there are other elements of the bill in front of us now. Perhaps some of those 97 per cent will make another land transaction and someone who is not among the 97 per cent and who has never transacted land before will make a transaction, and this will occur to them under the new regime. To understand this, I think the member has to forget about the 97 per cent. It was used as an illustrative point to say to the member that up until this point people were choosing with their feet, if you like, not to have a duplicate certificate. Going forward, everyone wanting to transact land will do so under the new regime, which includes other things in addition to the requirement to no longer have a duplicate certificate.

Hon NEIL THOMSON: I think that is clearer for me. I suppose the purpose of my questioning comes back to the issue of the economic benefits of this. We talked about faster transactions. What the minister said to me—again I am paraphrasing the minister—is that 97 per cent are already gaining the benefit by not requiring duplicate titles, but they will get other benefits from this. Those other benefits are outlined in the bill. I raised some issues that the minister responded to, including the issue of the economic benefits. We were talking about financial benefits. This comes back to the matter I raised about the cost of conveyancing for the consumer, but the minister said that that was not relevant. That is my understanding of it. The minister said it was not relevant to this at all.

Progress reported and leave granted to sit again, pursuant to standing orders.