

**TRANSFER OF LAND AMENDMENT BILL 2021**

*Second Reading*

Resumed from 5 August 2021.

**HON NEIL THOMSON (Mining and Pastoral)** [5.46 pm]: I rise on behalf of the opposition in support of the Transfer of Land Amendment Bill 2021. In my contribution to the second reading debate I will make some comments that are critical of the conveyancing system. In terms of the specific aspects that are presented in the bill, it is inevitable that we are moving down this pathway and the mechanics that are outlined in this bill will only facilitate that process more fully. The opposition will not oppose that, and will support the legislation.

As outlined in the second reading speech by the Minister for Regional Development —

This bill will improve and streamline conveyancing in Western Australia, further enabling the Western Australian land titles register to operate in an electronic environment, providing greater speed, certainty and security and simplify handling procedures for the property industry.

That is commendable, but I will spend a little time on some of the history of the bill and consider what has been missing within the national framework and in the Western Australian circumstance. I understand that Western Australia is probably a small player in the sense that the two major states, Victoria and New South Wales, are where the vast proportion of conveyancing occurs and this state represents a smaller proportion of national conveyancing. In a sense, these changes will enable us to fully implement electronic conveyancing. The second reading speech states —

The amendments proposed under this bill will support electronic conveyancing processes and further enable the benefits of electronic conveyancing to be realised.

That is an interesting throwaway line. We have talked about the benefits of greater speed, certainty, security and amplified handling procedures in the property industry. The part that has been missing in recent years through the reform process has been the benefit to the consumer.

The second reading speech states —

They will deliver greater procedural and administrative efficiencies in the lodgements and registration of documents relating to land transactions and related land dealings across Western Australia.

It then outlined some of those processes by which that will be done. The Transfer of Land Amendment Bill will amend the Transfer of Land Act 1893 through three key elements, including by modifying the definition of “counterpart documents” to improve the processing of documents electronically. I understand that it will also enable notices served under the Transfer of Land Act to be done electronically, without requiring manual processes. Finally, it will remove the requirement to issue and produce duplicate certificates, which will result in a greater ability to conduct land transactions in a fully electronic environment. From the second reading speech, the explanatory memorandum and the briefing we received from Landgate, I understand that this is a technical thing. We have received assurances that the requirement for the duplicate title, for example, was not necessary and that the processes will be secure, so the horror stories we heard some time ago about properties being sold by persons who did not own those properties and those sorts of circumstances will not be facilitated by this. In fact, it will improve the administrative handling of the management of land titles.

Just going back to the issue of the benefit to the consumer, a range of figures were floating around back in the day of the national competition policy. This was one of the reforms that was flagged during the Rudd government. I know this because I was intimately involved in the process. In 2007, when I was the person responsible for what is called the microeconomic competition reform area of Treasury, from recollection this was one of the 24 key reforms that were being delivered under the Business Regulation and Competition Working Group chaired by then Labor minister Lindsay Tanner and co-chaired by Craig Emerson, who I think is from Queensland. Hopefully without eliciting a negative response, as occurred with my statement last night, I will provide a bit of my background. I actually worked very closely with Craig during that time as an officer of Treasury. I met him on several occasions. He was very efficient. He was probably one of those Labor MPs that we do not see a lot of these days. We saw changes during the Keating era and then later, of course. This was the Keating generation, when economic reform was at the forefront of their thinking and we saw some progressive thinking around economics. All of the discussions hinged on the benefit to the consumer. This was going to drive tens of millions of dollars of reduced costs of conveyancing into the pockets of prospective or transacting landowners and property owners, because it was going to become more efficient and we were going to have a system that was going to reduce conveyancing costs. I am certainly not going to blame the Labor Party for the derailment of some of that. I think commonwealth governments of all stripes have failed to rein in some of the power that has probably resided in some of the concentration of control. We saw the banks take a key role in the delivery of electronic conveyancing.

In 2007, I got the job of chairing an interjurisdictional working group because Western Australia was deemed to be a neutral party in the debate between Victoria and New South Wales on this matter. It was a great experience.

I chaired that for a fair few months. We met with senior Treasury and Premier and Cabinet officers from those states and we produced, at that stage, a charter and also a set of governance agreements for what effectively was going to be a quango—a jointly owned entity for electronic conveyancing. That was going to be established and jointly owned by jurisdictions across Australia. Afterwards, though, the powers that be of all stripes and colours made the call that that was not going to work and that process was abandoned. We then saw the development of the so-called Property Exchange Australia group, which had fairly strong involvement in the banking sector. Over time, the delivery of that was effectively privatised completely. My colleague Hon Dr Steve Thomas is very pro-private sector, but one of the challenges we have with all these concentrations is that the removal of competition does not necessarily result in the greatest and most positive outcomes; hence, we ended up with a second reading speech and explanatory memorandum that completely missed any conversation about consumers. They talk about administrative processes, the electronic environment, greater speed, certainty, security and simplified handling procedures for the property industry. We are all for that. Certainly the alliance is all for those things, but it would have been nice if there had been a little thought or confirmation, perhaps through the consideration of this bill, of how consumers will be guaranteed some sort of saving in this process for the enabling of the benefits of electronic conveyancing to be realised. There are questions about who will be the beneficiary.

The evolution of things is amazing. Fifteen years later, we are finally doing the implementation through a process of changing our legislation. It is a very different working environment now. We have seen the partial privatisation of Landgate, for example. That is also a matter that I would like to raise. It is worth saying that the partial privatisation of Landgate—the \$1.4 billion sale of the back-of-house component of Landgate, with a guarantee of a fee for every transaction—will not necessarily provide a competitive environment. I certainly would have liked, as part of the opportunity to come here with this bill, to maybe have a conversation about what savings have been achieved for consumers—the transacting public—through the more efficient processes within there. Back in, I think, 2019, the state did a deal to commercialise the electronic processing of property transactions for Landgate. At the time, the opposition, led by shadow Treasurer Dean Nalder, argued against it. I support his position. I think there are some aspects of that that I believed lacked the transparency that would be required. Clearly, \$1.4 billion into the net operating balance of the Western Australian government was a major contribution.

There is also an element of not really knowing whether this is going to result in a more efficient land titles management system. Once these things go, they seem to disappear into the ether and we do not have conversations in this place as to whether or not they were in the public interest. We know that when you search for a certificate of title, for example, there is a customer fee of 75 per cent. That becomes the service fee paid to Landgate. I assume there is a search fee. I have done a few title searches. If it is \$30, then I assume you pay 75 per cent back to this element called the Land Services WA consortium. At the time, shadow Treasurer Dean Nalder bucketed the deal. This is from *WAtoday* in an article by esteemed journalist Nathan Hondros on 10 September 2019. He was one of the strong Labor chiefs of staffs under the previous Carpenter government, I think it was.

Several members interjected.

**Hon NEIL THOMSON:** He is someone who worked for one of your ministers, I think. We know all that story.

Several members interjected.

**Hon NEIL THOMSON:** There we go. It is amazing the course of careers that people find themselves in and, when they see the light, they eventually come across to our side and get involved.

Several members interjected.

**Hon NEIL THOMSON:** It is not even a Thursday!

A member interjected.

**Hon NEIL THOMSON:** He certainly saw the light. You never know; 2025, here we come. Who knows what Nathan is going to be doing? I am sure he has a few plans and I will leave it up to him to decide.

Dean Nalder bucketed this plan and I am glad I invigorated the discussion a little coming into the end of this session. At the time, he said it was a broken promise because it was a privatisation and we saw that occur. The question I ask is whether it was delivering for us and how this process is going to deliver for consumers. I think we should always have a view as to how the consuming public is going to be the beneficiary of these things. Over time, the Australian Registrars' National Electronic Conveyancing Council was formed and some reforms were made to the Electronic Conveyancing Act in 2014. That would have been during the Barnett era, which would have facilitated some of this work. We are on a long journey and we had a long journey to get here. I will certainly not be taking too much time because I think the journey for this bill should hopefully culminate today.

We saw the partial commercialisation of Landgate. There is a very succinct but informative summary on the Landgate website. It just confirms how that operates. The operator is paid a fee every time the register is updated, when a transaction changes hands and for a search, for example if someone wants their certificate of title. I do not know

how the Transfer of Land Amendment Bill is going to affect that. I do not know. Does that mean we are going to have an increase or a decrease in activity on this partially commercialised entity? Is there some benefit? I think that would be a useful question to ask about the impact on that privatised entity. Without speaking with a degree of expertise on the subject simply because I was not here at the time, I felt that the state's data we hold is of immense value. I always felt that in some respects I was probably a bit old fashioned in relation to Landgate. Information on the shared land information platform includes a lot more information like environmental and planning data and a whole range of things that has to be paid for by agencies just to do work in the public interest, because of the partial commercialisation, notwithstanding the government ownership of Landgate. I thought that was always a negative. Although this is specifically to do with transactions, I think there is some point in time worthy of a significant review of the outcomes that resulted from the actions that have been taken so far over history. It would include all sides of government and services that are provided to both the public sector and the private sector, particularly now as we see the concentration into the electronic conveyancing systems through PEXA, which is going to be an outcome of this bill when it goes through.

PEXA is a private entity. It is Property Exchange Australia Ltd and it operates on an electronic lodgement network. Subscribers can use the PEXA system and it facilitates electronic conveyancing across the network to conduct the lodgement and, where applicable, financial settlement of a conveyancing transaction. My understanding is PEXA Ltd, the entity, will now operate effectively as a monopoly provider for these transactions because there will no longer be that small element of manual transactions. Getting rid of manual is fine. I think the industry supports the change but we have seen a little bit of a chequered history around this. Something worthy of putting on the record is challenges with respect of the pricing. PEXA's policy is to have a transaction service fee. There is a determination process in establishing that fee. There is a review of the service fee process. We are talking about a proprietary limited company. There are some changes to input costs. It would appear to be governed by some regulatory framework but, again, I am not a thousand per cent sure of the details. As I said, these things happened after my time at Treasury.

I draw the attention of the house to an article in *The Australian*. I think is worthy of doing this because it is a fairly recent article. It is by Cliona O'Dowd, a journalist, and it was in *The Australian* on 30 November 2021. The title of the article is, "PEXA draws heat for withdrawing from e-conveyancing talks, NSW minister Victor Dominello slams 'self-interest'". This all happened during the hard border time. By the look of it, as far as I can tell, our minister has not been actively involved in the inter-jurisdictional discussions on this issue. I assume the minister had some Zoom calls. National cabinet took out the Council of Australian Governments process and we saw significant change in the last few years, for obviously good reasons during the middle of a COVID pandemic. I ask whether the minister had their eye on the ball for the consumers of Western Australia and the value for money that they are likely to be receiving from this national entity. If we look at the article, it reads —

E-conveyancing leader PEXA has temporarily withdrawn from the multi-party forums tasked with bringing competition into the lucrative property settlements market, sparking accusations of self-interest.

I probably have the advantage that back in 2007 I was a bureaucrat working for Treasury. I sat next to Craig Emerson on a regular basis and represented the interests of Western Australia on behalf of then Treasurer Eric Ripper. With a bit of zealotry—as most Treasury officers tend to have, but it has been beaten out of me a little over time—I presented the case on the competition and the opportunities that these reforms would drive for consumers. In this case, we are now facilitating for the entity that controls the process to operate it more thoroughly. We do not oppose that; we support that, but I think asking whether this is driving an outcome is worthy of discussion. My message to the Minister for Lands is that he should take note of this issue and ensure that consumers are at the forefront of his thinking. We have the next three years of the McGowan government to think about how consumers will benefit from this. When the minister attends a potentially reconfigured Council of Australian Governments meeting after the election—we do not know whether that will be with a returned Morrison government or an Albanese government—I assume that some normalisation of those interjurisdictional arrangements will enable a more laser-light focus on those broader economic issues, which I would certainly encourage.

The article states —

ASX-listed PEXA, whose effective monopoly in the e-conveyancing market is under threat from the proposed reforms, is understood ...

I do not know what those detailed reforms are. I again encourage the minister to be aware of them. We have not had any explanation of them here other than we are facilitating a mechanistic process for the Transfer of Land Act to go electronic. That is all we get. It is similar to legislation we debated previously. We are provided a two or three-page document with a bit of superficial argument. It has a few lines that say it is all beneficial and we will tick here and walk away. I put this question on the record: to what extent will this benefit the consumers of Western Australia? I would like to understand what the reforms are.

The article states —

ASX-listed PEXA, whose effective monopoly in the e-conveyancing market is under threat from the proposed reforms, is understood to have removed itself from consultations earlier this month, days after states and territories agreed to a fast-tracked timetable to force competition on the burgeoning sector.

Forcing competition was the original intent when Kevin Rudd established those working groups in 2007—of which I was a member—so that we could see a result for consumers. Even if it is a saving of \$50 or whatever from a settlement fee, it is still a saving. I know that people here might say that that is a small amount within the context of a property transaction, because we see the massive stamp duty charges that still exist in the state many years later. The slowing of transactions has been talked about. We have an emerging housing crisis. We have structural problems in the housing sector whereby older people may live in houses that are no longer fit for purpose. They might want to move to another suburb and downsize, but to transact out of their home would cost \$40 000 to \$50 000 per transaction. That is an economic inefficiency and results in problems for them. We could argue that the issue around the conveyancing charges is a very small component, but I argue that it is worthy of discussion because we are now discussing reforms that will facilitate this entity to effectively run our conveyancing in Western Australia.

PEXA's excuse in November last year was —

The withdrawal was to allow its subject matter experts to focus on writing submissions for the Electronic Conveyancing National Law Amendment Bill as well as the regulator's model operating requirements update, which Electronic Lodgment Network Operators, or ELNOs, must comply with ...

We do not have a copy of the bill referred to; we have not discussed that at all. PEXA has a defence, and fair enough; it might be right. Who knows? But I think the conversation should be had in the public interest, because we are effectively the last line of defence for the public interest when we speak about it today.

The article refers to interoperability —

“PEXA is not required by law or regulation to help develop interoperability—our current significant contribution has been provided voluntarily in good will,” PEXA chief operations officer Simon Smith said.

I mean no disrespect to PEXA's chief operating officer Simon Smith. I am sure as a proprietary limited company, PEXA is concerned about the returns on its business, but again in monopoly situations, it is up to the government to provide that insight and examine how the regulatory environment will ensure that we deliver efficiency and the organisation does not gouge. Again, no disrespect to the organisation. As I said, these private entities will operate in the interests of their shareholders in the way we would expect them to do. I hope that this minister is very much aware of that, because we see —

... NSW Customer Service Minister Victor Dominello called on PEXA to reverse its stance.

I do not know where Western Australia stands on this. It must work in the public interest and not self-interest, so we are asking these questions.

I will not spend too much more time. This is a very mechanical bill. It is sensible. We live in the twenty-first century. We are not in the age of rubberstamps and paper. We are in the age of electronics. It is a sensible aspect, but I put to the government that it could have done a better job of presenting some of those other aspects relating to consumer benefits. I hope the government takes my comments in the spirit in which I am presenting them; it is not in a sort of accusatory way, but I am saying we need some contextualisation. I do not know who drafted this and whether they came from Landgate, the Department of Lands or the State Solicitor's Office. I do not know, but maybe it was just that easy to say it will be more efficient and administratively good and speed up things, so let us just tick the box and move on.

Anyhow, I know the industry supports this in the main and I certainly have not heard any negative comment. I know that Peter Rundle spoke about this legislation in the Assembly. I support our position and we know that that is something. I believe it is important to focus on making the settlement processes efficient. We should constantly put pressure on the industry to reduce those costs and fees and help new homebuyers and others save so that we can have an efficient and competitive market. Therefore, I support the bill and conclude my presentation today. Thank you.

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [6.19 pm] — in reply: I thank Hon Neil Thomson for his contribution. I note that the opposition will be supporting the Transfer of Land Amendment Bill 2021. The honourable member made the point during his contribution that this legislation is effectively a technical upgrade. He is certainly supportive of the provisions in the bill, which will go towards reducing red tape. With that, I might continue my remarks tomorrow.

Debate adjourned, pursuant to standing orders.