

**TRANSFER OF LAND AMENDMENT BILL 2021**

*Committee*

Resumed from 15 June. The Deputy Chair of Committees (Hon Peter Foster) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

**Clause 1: Short Title —**

Progress was reported after the clause had been partly considered.

**Hon NEIL THOMSON:** Before going into the question, I want to clarify something that may have led to a slight misunderstanding in the interaction between myself and the minister yesterday. We were discussing the issue of duplicate titles and I may have confounded the issue of counterpart documents in my question and that may have made it difficult for the minister to understand where I was coming from with the question. I apologise for that. The question was fine insofar as we were talking about the efficiencies around counterpart documents, because a lot of the benefit that has been derived from this process is coming from the definition changes and the changes that occur, I would assume, back of house.

I would like clarification in relation to counterpart documents because as the minister explained very clearly to me there is only a small number of transactions that utilise duplicate titles. There are obviously a lot of duplicate titles out there. Those will no longer be legally binding and will not have value once this bill is proclaimed. In *Hansard* I said —

So that I am clear, because we are saying that 97 per cent of people do not have counterpart documents already ...

I withdraw that. If the minister could just clarify for me, 97 per cent of people do not use duplicate titles at transaction; everybody is required to under the current legislation, not the bill. If I could turn it into a question, my question is: could the minister please clarify the requirement for counterpart documents? My understanding is that everyone is required, under the current definitions, to have counterpart documents, which are a whole range of documents. The second of my two questions is: what are those counterpart documents for a normal transaction, and are there any variations to those in different transactions?

**Hon SUE ELLERY:** In my second reading reply I said that 97 per cent of new mortgages registered in 2020 opted to have no duplicate certificate of title registered with mortgagees, confident they do not need a duplicate of the title. What is the member's question about counterpart documents? What does he want to know about counterpart documents?

**Hon NEIL THOMSON:** What percentage of transactions under the current legislation require counterpart documents?

**Hon SUE ELLERY:** Currently, mortgagees are required to hold a counterpart in electronic conveyancing. With the change proposed in the bill before us now, people will still need them, but the definition has changed so that they are no longer required to be identical documents.

**Hon NEIL THOMSON:** What are those documents?

**Hon SUE ELLERY:** It is a copy of the mortgage, but they no longer have to be absolutely identical.

**Hon NEIL THOMSON:** Are there any other counterpart documents other than the copy of the mortgage?

**Hon SUE ELLERY:** I am advised that there are some, like annuities, but it is very unusual to have those. They are in the minority of documents.

**Hon NEIL THOMSON:** When someone talks about registration documents on different types of property, are they not talking about counterpart documents? Is this nothing to do with this bill?

**Hon SUE ELLERY:** They are not captured in the sense that counterparts are not registered—this bill captures those things that are registered—but the definition has changed.

**Hon NEIL THOMSON:** In another part of the minister's second reading speech, she talked about PEXA. I had raised the issue of PEXA and the minister said —

... this bill is an amendment to the law to enable administration of the Torrens title system and interoperability for electronic conveyancing is separate from this bill.

Basically, what the minister was saying to me—I am paraphrasing that comment—was that this has no impact on PEXA, but the minister mentioned the system of interoperability. The minister also talked about cost and time savings. I am trying to work out which part of the system will actually get those savings. Are we talking about, to use the minister's term—I disagree with her—the corporatised or the privatised part of Landgate, as in the register? Are we talking about the register? Is that where all the cost and time savings will occur?

**Hon SUE ELLERY:** Let us put the issue of PEXA right over there. It has nothing to do with this bill. The member raised it; I felt obliged to respond to it in my second reading reply. The member raised it in his second reading contribution, but it has no relationship to the bill that is before us now. The government's proposition that this bill will create savings is the very nature of electronic conveyancing. We will be saving time and money for everybody involved, and time is money. It is a more efficient system. It will make savings for users in that sense. That is what the savings relate to.

**Hon NEIL THOMSON:** Will Land Services WA be a beneficiary of the savings?

**Hon SUE ELLERY:** I am not sure where the member is going. Not particularly and not specifically, except to the extent that it is part of what is described to me as the ecosystem of conveyancing, so, in that sense, it may get a benefit out of that. I made the point when I responded to the member's last point: the commercialisation of that part of Landgate has nothing to do with the bill that is before us today.

**Hon NEIL THOMSON:** I find that interesting. The minister says that everybody will make a saving, and, no doubt, if we break down the elements, we will have time savings, which means that someone who is purchasing a property will have a saving in time. That is great; that is why we support this legislation. We believe in electronic conveyancing. We will have savings in the processing of documents. I assume, particularly around the time of processing, that will impact particularly on settlement agents and those people who undertake conveyancing activities. They will be beneficiaries, as well. Then we use words like "everybody" and we talk about the ecosystem. There is an entity called Land Services WA, which was sold by the state for \$1.4 billion, I believe, or a significant amount of money, to an entity—Macquarie Infrastructure and Real Assets, and superannuation funds Sunsuper and HESTA. From my assessment, not so much the removal of duplicate titles, because that seems to be such a small element of the transactions, but certainly the definition of counterpart documents will enable these processes to be done electronically. That will result in some processing saving within that entity. Minister, there is a reason for my questions. The reason is that I simply do not see—I made this very clear in my second reading contribution—any real analysis, apart from the time saving, of the potential cost saving of transactions that might drive. I laid out my background and competition policy. Excuse me if I am banging on about this, but the state has done a deal with a private entity to create a processing system, and that entity is now likely to be a beneficiary. Please correct me if I am wrong. We talk about "everybody" in a very vague sense. What guarantee can the minister provide me that the consumers are going to benefit from the cost of transactions in relation to the changes that are occurring?

**Hon SUE ELLERY:** This is the last time. I have tried to help the honourable member. He just put to me that I should correct him if he is wrong. He has scrambled together a whole bunch of different things that do not come within the scope of the bill. He asked in his second reading contribution for me to respond to his proposition that consumers will not benefit from the bill. I did respond in my second reading speech. I have tried to respond since we have been in committee. I really cannot take this any further.

**The DEPUTY CHAIR (Hon Peter Foster):** Before I give you the call, Hon Neil Thomson, I just remind you that the Committee of the Whole House is not a vehicle for continuing debate on the policy of the bill, which is debated at the second reading stage.

**Hon NEIL THOMSON:** I appreciate your counsel, deputy chair. This is certainly not about policy; this is about trying to understand the benefits when vague terms are presented to us. We have not had a table presented to outline how the cost of those transactions is going to be impacted, so I ask the question: what is the cost associated with processing the title through the register for a person undertaking a settlement on an average property?

**Hon SUE ELLERY:** I do not have that information available. I cannot get that information to the honourable member. I cannot take the question that he wants to examine about cost savings any further.

**Hon NEIL THOMSON:** Were any guarantees given in the sale contract to Land Services WA to deliver this bill?

**Hon SUE ELLERY:** That is so beyond the scope of this bill that I am really not able to answer. I do not have advisers on the terms of the sale. I suspect that even if I did, it would probably be commercial-in-confidence. It is beyond the scope of the bill before us today.

**Hon NEIL THOMSON:** So we cannot assess the cost. What are the transaction costs? When we look at Land Services WA, what is the cost charged to the settlement agent on an average transaction, which I assume is on-charged to the consumer? What is the average cost to the consumer?

**Hon Sue Ellery:** I cannot take it any further.

**The DEPUTY CHAIR:** The question is that clause 1 stand as printed. Before I give you the call again, I remind you that consideration of the short title is not a mini second reading debate, but a debate on the drafting of the bill. Members' comments should relate, at least in some part, to clauses of the bill and how they tie together.

**Hon NEIL THOMSON:** I have no further questions.

**Clause put and passed.**

**Clauses 2 to 68 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [3.15 pm]: I move —

That the bill be now read a third time.

**HON NEIL THOMSON (Mining and Pastoral)** [3.15 pm]: I rise to reiterate the National–Liberal alliance’s support for the Transfer of Land Amendment Bill 2021. There is no doubt that the bill is needed and that electronic conveyancing and the modernisation of the framework under the Transfer of Land Act requires those changes. We are moving into the twenty-first century, which is good to see.

I want to make a comment, though, because I feel that it would have been helpful if the material provided had a more detailed analysis. Many comments were made throughout the proceedings, but the second reading speech and the attached explanatory memorandum provide analysis only on the technicalities of the bill, so it has been difficult for the opposition to really understand the impact on the consumer. In Western Australia, where there is this privatised processing of the register, we have used the term “commercialisation”. My understanding of commercialisation has always been very different. Commercialisation is usually when a government-owned entity applies commercial principles, and that has been the longstanding practice when we use that term. We say that Western Power or any of those government trading enterprises are commercialised. We talk about ecosystems of process. I am sure it would be in the government’s interest, now that this entity is operating and making a profit from transactions, for somebody in the opposition who represents the lands portfolio to understand how we are benefiting and reducing cost pressures and making sure that then flows on to the consumer. It is all very well to say that time is money. It is absolutely true—I support that and that is why we support the bill—but there is no visibility of what is behind this, in the back of house.

In my second reading speech, I outlined my history. The point is that, if we go back to 2007, when the Rudd government came to power, there was a push to drive red tape reduction at a national level and there has been a long history of it since. One of the challenges in this great ecosystem of processing is that we now effectively have a monopoly operating, in PEXA.

We have a commercialised entity that is making money out of every transaction that the consumer operates in. We have a government that says it has consulted with stakeholders. But nowhere in the presentation have we heard whether there has been a broad application of competition principles for the consumer. Maybe the minister is right. Maybe the government is right and there is nothing to be gained here in reducing the costs of the average settlement, which goes through when someone does a transaction, driving that pressure. But there is certainly no economic regulation on it. When a privatised entity is operating a monopoly, we do not have prices oversight on that. In a memo put out by Landgate, a 25 per cent transaction fee was mentioned. What bothers me, and it is reasonable as a member of the opposition to be bothered about this, is that this feels like being a mushroom. We are kept in the dark. We present our frustrations. We get broad motherhood statements from the minister that do not delve into the serious issue of who is representing the consumer here, apart from the saving of time. That is fine!

I put on the record that since coming into this place my feeling of the standard of the material provided varies a lot. In the debate on the previous bill, I complimented the Department of Planning, Lands and Heritage and whoever drafted the explanatory memorandum because it was quite detailed—clause by clause—so that was a lot more transparent.

This issue is very much an economic issue and a detailed technical issue. I say with confidence—I am sure comments will be made by members opposite, and I actually do not care about critical comments—that I feel none the wiser coming out of this process. The legislation will clearly help us in terms of the timesaving and electronics, which is great. In terms of consumer cost savings, I am none the wiser.

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [3.22 pm] — in reply: I do not normally make a third reading response and I am sorry to take up the house’s time, but I am going to. I have just been provided with a copy of an email, which I am happy to table if the member wants me to. On 11 February 2022, the minister’s office emailed Hon Neil Thomson directly and offered him briefings. I am advised that he chose not to take up those briefings.

**Hon Neil Thomson** interjected.

**Hon SUE ELLERY:** This is my speech, not yours!

The speech that we just heard in the third reading debate bore no relationship to the matters that we were dealing with in the bill. I do not mind if the honourable member and the opposition want to be incompetent—I do not mind at all! But do not blame me for you not taking up an offer of a briefing and not understanding the bill that was actually before us.

I commend the bill to the house.

Question put and passed.

Bill read a third time and passed.