

TRANSFER OF LAND AMENDMENT BILL 2001

Second Reading

Resumed from an earlier stage of the sitting.

MR JOHNSON (Hillarys) [3.58 pm]: Earlier, I had to conclude my remarks because of the suspension for the lunch break. I have an arrangement with the member for Armadale, who is the minister responsible for this Bill, that I will conclude my remarks in a short time - in fact, in two minutes. I will keep that agreement so long as I do not get too many interjections from members opposite. I am happy to do that because the member for Armadale and I are getting on much better these days and I do not want to keep her in this Chamber for longer than need be. Before the suspension for lunch, I referred to the great Australian dream; however, I have said enough on that. I have a genuine concern about the security of the information technology system that the Department of Land Administration will use to store the records of land titles.

I know that firewalls and safety walls, in information technology terms, have been circumvented by hackers. It is possible for hackers to get around some of these safeguards, which departments and agencies have had for some time. I ask the minister to give me some assurance that the computerised system for the registration of land titles at the Department of Land Administration has adequate protection and is impregnable so that damage will not be done to what is probably the biggest asset people own; that is, their homes. I am not saying their homes would be destroyed, but the records could be, and the disruption that would cause would be enormous. DOLA is not infallible; it has made mistakes in the past. It made a mistake a few years ago when it automatically removed a covenant on a whole range of title deeds in one area, which could have cost a fortune and done enormous damage. I pointed that out to the department and it quickly acted on the matter and corrected it. At least with a manual, handwritten system there is a safeguard, but that safeguard does not always exist in the IT world of today, with international hackers and viruses. If the minister can give me an absolute assurance that those records will be kept intact, and will not be able to be obtained by hackers, then I will be happy.

MS MacTIERNAN (Armadale - Minister for Planning and Infrastructure) [4.01 pm]: The member for Hillarys exceeded his undertaking by some 50 per cent, but we will not hold that against him. He made as fascinating a contribution as ever. He is obviously a great disciple of David Hume, the Scottish philosopher, who said that reason is slave to the passion.

I thank members for their contributions, and they have raised some valid concerns. The member for Nedlands has obviously gone to some trouble to look at the existing paper title system and how the new digital system will work, and she rightly points out that there are some relevant security issues. The electronic age has provided great opportunities for fraud across the board, and greater vigilance is required to ensure that we get the benefits of the new technology without undermining security. This is not an easy matter, and I do not think anyone could ever give cast iron guarantees, but what I can say is that the Department of Land Administration has put in place as rigorous a system as is possible to address this issue.

I will go through some of those protections, because this is an area of legitimate concern. The security for a digital title is similar to the security for a paper title, in that DOLA holds the original record, whether paper or digital, and a duplicate certificate of title is held by the relevant interest holder. The original digital record is held in a secure computer environment rather than in a secure storage area; the security is in the electronic system rather than under physical lock and key. I will describe this secure storage area for the digital system. A user identification number and password system controls all access to the DOLA computer network. Access is monitored and passwords expire monthly. Members must understand that there is no direct access to the digital title server for external or Internet users. The key title information is copied into a separate dissemination server. External users - the general public, conveyancers and solicitors - do not access the computer that has the records stored; they access another independent server that has copies of all that information taken over to it. At no stage is external access available to the digital title system. Computer systems containing the digital titles database are secured in an offsite computer facility with controlled access; and only authorised staff are afforded access to this computer facility. The computer facility is staffed 24 hours per day and is equipped with an uninterrupted power source that allows the system to continue to function in the event of power failure.

It might also be useful to say a few words about the digital endorsing process. As with paper titles, the digital process is entirely document driven. The system requires a document to be lodged with DOLA at a date and time which is recorded on the instrument and in the computer system. It is then ready for examination by DOLA officers in each registration system. The digital title is endorsed with the lodged document details by the examiners who have authorised access via their logged-on IDs. Any alteration to the digital title by the relevant examiner is checked electronically for compliance with business rules and accuracy against known data. The digital title data is updated by this process and is then copied to the dissemination server for searching by the

public. The duplicate title lodged with the instrument is destroyed and a new edition printed and returned to the relevant interest holder.

It is clear that a great deal of care has been taken by DOLA to ensure that to the maximum extent possible we have a secure electronic system. The key features include: no direct access by external users to the computer housing the digital register; a very heavily controlled access system with security codes; a system of expiration of those codes; monitoring of all amendments; and an electronic trail showing who was responsible for any changes made.

I note that the vast interest of the member for Nedlands has dissipated in five minutes, given her concerns about this system compared with the paper system.

A great many frauds were perpetrated with the paper system. The paper system, like the electronic system, was not totally immune to fraudulent activity. Indeed, I acted for a constituent who had put his duplicate certificate of title into a safety box at a reputable bank. Some years later when he went to recover that duplicate certificate of title, he found to his horror that a mortgage had been entered onto that document and had been discharged. Obviously some bank employee had used his certificate of title to access a loan, using that certificate of title as security.

Mr Omodei: Was he the same man?

Ms MacTIERNAN: No. The bank employee took the duplicate certificate of title and presumably used that as the basis for fraudulently applying for a loan in the name of the registered proprietor. He subsequently discharged the mortgage and put the certificate of title back in the box. One can imagine my constituent's concern when he noticed that a mortgage had been granted and discharged about which he knew nothing. The member for Hillarys asked for an absolute guarantee. I cannot give an absolute guarantee, but I believe the Department of Land Administration has done a superb and competent job in ensuring that, within the realms of what is technically and reasonably feasible, adequate protections are in place.

The member for Wagin raised the second major issue, which relates to privacy. Those are valid concerns. However, it should be understood that there will not be a great deal of change to the system. It has for some time been possible to conduct an index search by name and learn who are the owners of property. It should be understood that the addresses of registered proprietors are by and large already recorded on the paper certificate of title.

Mr Waldron: Can people search for the address?

Ms MacTIERNAN: Yes; the title shows the addresses of the registered proprietors rather than the address of the lot. The names and addresses are not included in the description contained on the certificate of title, but on the back of the title. It will not always be the current address. The title of a home will often show the address of the proprietor at the time he purchased the property. There is some ambiguity. However, it has always been possible to get the lot number from the certificate of title and then go to the local authority to find out the address that corresponds with that lot. It has always been possible for someone in the mood to execute a Supreme Court judge - which seems to be one of the member for Wagin's concerns. Someone can do a name index search, find out what properties a particular person owns and look at the local government register to learn what addresses correspond with the lots cited on the certificates of title. This will make it easier.

Mr Waldron: My concern is that it will make that information more readily available.

Ms MacTIERNAN: There is no doubt that this amendment will make that information more readily available. However, it will have some benefits. It will help a bona fide creditor who is seeking to find someone's assets. For example, if a builder to whom a brickie had provided numerous services went bust without paying, the brickie could quite properly find out what properties that builder owned and execute against them. There are valid reasons for making the data readily available; however, there may well be people with a particular vulnerability, such as judges and women escaping domestic violence. Such issues may be addressed. It might be possible to suppress the addresses of those classes of persons, as we do with their electoral records. We are considering what might need to be done to provide some protection to those classes of persons. To this end, DOLA, as an information-rich agency, is part of the Department of the Premier and Cabinet's working committee on privacy issues. We want to develop a broad policy about privacy and the sorts of protections we need to put in place. It is a two-way street: we want a certain degree of transparency and to allow people to have access to information for legitimate business and other reasons; however, that must be counterbalanced against the concerns that some people might have about their personal safety. That is the policy discussion taking place at the moment. DOLA is awaiting further determination from the federal sphere about its basic privacy standards. Rather than a multiplicity of standards, we would prefer a national standard under which to operate.

Mr Waldron: Does New South Wales have a suppression capacity?

Ms MacTIERNAN: I am not sure, but I can get that information. The capacity to do that is legally available, but we must work out the policy framework. There are good reasons for wanting information to be readily available so that people do not defeat creditors.

The members raised valid concerns and I hope they have been adequately addressed. The information provided by DOLA has been adequate. The member for Nedlands expressed the concern that the new titles do not contain a sketch plan. A reference to a survey plan can be easily accessed at the same time as doing a title search. It is a matter of a single click, and one can have a full print-out of the relevant portion of the survey plan.

Some small problems have been identified since the Bill was drafted and approved by Cabinet, and I will move two amendments during the consideration in detail stage. They are technicalities, and I will set out the detail of those during the consideration in detail stage.

I again commend DOLA for its very professional work and thank the members of the Opposition and the National Party for their support.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 80 put and passed.

New clause 81 -

Ms MacTIERNAN: I move -

Page 42, after line 30 - To insert the following -

81. Section 239A amended

Section 239A(3)(b) is amended by deleting “of which can be obtained under section 239(2);” and inserting instead –

“ or print-out of which can be obtained under section 239(3); ”

The original legislation refers only to the capacity of the Department of Land Administration to provide copies of documents. Obviously now in the electronic age, it is also possible to provide print-outs of documents. However, those print-outs may not technically be copies. This amendment is designed to ensure that DOLA can provide print-outs as well copies.

Mr DAY: I appreciate the minister’s explanation, but I would like some clarification about why what the minister wants to do is not covered by the Bill.

Ms MacTIERNAN: The explanation that has been provided to me is that section 239A(3)(b) enables the Registrar of Titles, in providing certain documents, to provide copies. However, it does not allow for the registrar to provide print-outs. There is a technical question or ambiguity about whether the word “copy” includes a print-out. Therefore, we want to put beyond doubt that print-outs are included within the class of documents that can be provided.

New clause put and passed.

Clause 81: Section 239A replaced -

Ms MacTIERNAN: I move -

Page 43, lines 1 to 3 - To delete the lines and substitute the following -

82. Section 239B inserted

After section 239A the following section is inserted –

This amendment will correct an error in the Bill. The Bill repeals the power of the registrar to provide to DOLA information derived from the register. This amendment will remove that repeal provision. The original concept was to provide that information under the power that is contained in the State Trading Concerns Act; and certain revenue consequences flowed from the ability to provide information under that Act rather than through the transfer of land legislation. However, after that provision was put in place, further legal advice was obtained that made it clear that if that section were repealed the Registrar of Titles would not be in a position to provide that

information to DOLA. The amendment seeks to return to the status quo; that is, information will be provided by the registrar to the department, which will then provide it to the industry, such as real estate agents, under this legislation rather than under the State Trading Concerns Act as originally proposed.

Amendment put and passed.

Ms MacTIERNAN: I move -

Page 43, line 5 - To delete “**239A.**” and substitute “**239B.**”.

This is a consequential amendment to rectify the numbering of the legislation.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 82 to 84 put and passed.

Title put and passed.

Third Reading

MS MacTIERNAN (Armadale - Minister for Planning and Infrastructure) [4.27 pm]: I move -

That the Bill be now read a third time.

Point of Order

Mr OMODEI: I understand the legislation has been amended; therefore, we cannot go straight to the third reading of the Bill.

The ACTING SPEAKER (Mr McRae): On Tuesday, the House suspended standing orders to allow the rapid progression of Bills through all stages for the remaining sitting days of this year.

Debate Resumed

Question put and passed.

Bill read a third time and transmitted to the Council.