

14 NOVEMBER 2013

NOTE THAT THIS IS A PROOF VERSION ONLY. THE FINAL VERSION AND SUBSEQUENT DEBATES CAN BE VIEWED FROM THE HANSARD SECTION OF THIS WEBSITE. SELECT HANSARD OVERVIEW, HANSARD BY BILL

REAL PROPERTY AMENDMENT (ELECTRONIC CONVEYANCING) BILL 2013

Page: 58

Bill introduced on motion by Mr Andrew Constance, read a first time and printed.

Second Reading

Mr ANDREW CONSTANCE (Bega—Minister for Finance and Services) [4.03 p.m.]: I move:

That this bill be now read a second time.

The Real Property Amendment (Electronic Conveyancing) Bill 2013 will make a number of amendments aimed at facilitating the implementation of electronic conveyancing in New South Wales. New South Wales has been at the forefront of the development of national electronic conveyancing. In 2010 New South Wales collaborated with Victoria and Queensland to form National E-Conveyancing Development Limited [NECDL] to build the online platform to deliver a national electronic conveyancing solution to the Australian property industry. National E-Conveyancing Development Limited has now developed that platform, which is called Property Exchange Australia [PEXA]. Property Exchange Australia is now operating successfully in Victoria and New South Wales, processing mortgage transactions for the Commonwealth Bank, the National Australia Bank and the ANZ Bank.

Very soon Westpac will be joining the other major banks and Queensland will join New South Wales and Victoria in offering electronic lodgement of mortgage transactions through PEXA. Additional States and financial institutions are to be added to the system in the coming months, and in the second half of 2014 PEXA will begin processing transfers of land and caveats as well as mortgages. Like the Australian Stock Exchange did for the exchange of shares, PEXA removes the manual processes and paperwork associated with the exchange of property by allowing land registries, financial institutions and conveyancing practitioners to transact together, online, for the very first time. It is perhaps fitting that electronic conveyancing has been launched in New South Wales in this the 150th year of the Torrens system, as electronic conveyancing will bring about the most significant changes to conveyancing practice since the inception of the Torrens system.

This bill makes a number of minor amendments to the Real Property Act that are consequential on the commencement of electronic conveyancing and will facilitate increased usage of the system. The most significant of those changes relates to certificates of title. Certificates of title have played an integral role in conveyancing over the past 150 years with possession providing a level of assurance that a transaction is authorised, as well as being the key to obtaining registration of the documents giving effect to that transaction. However, a paper certificate of title that must be physically exchanged and then lodged at Land and Property Information, which operates the land registry in New South Wales, is not suited to electronic conveyancing.

Accordingly, new ways of protecting rights and providing assurance to the parties in electronic transactions have had to be found. Ultimately, as electronic conveyancing over time becomes the prevalent means of conducting conveyancing transactions, it may be that no certificates of title will be issued. However, for some years yet we expect conveyancing transactions to be conducted both electronically and on paper. Perhaps the most significant amendments contained in this bill provide for the optional issue of paper certificates of title by allowing the Registrar General to determine whether to issue a paper certificate in particular cases. This replaces the current arrangement under which the Registrar General issues a certificate of title for all privately owned land in New South Wales.

14 NOVEMBER 2013

NOTE THAT THIS IS A PROOF VERSION ONLY. THE FINAL VERSION AND SUBSEQUENT DEBATES CAN BE VIEWED FROM THE HANSARD SECTION OF THIS WEBSITE. SELECT HANSARD OVERVIEW, HANSARD BY BILL

Initially this means that mortgagees who have access to the PEXA system may elect not to have a certificate of title issued for land over which they hold a mortgage. The bill also allows the Registrar General, in circumstances where a certificate of title is not issued or has been cancelled, to accept an electronic consent to the registration of transactions where currently a paper certificate of title is required before the registration can proceed. The option not to have a certificate of title issued is limited initially to banks that have access to PEXA and which can lodge an electronic consent instead of physically lodging a paper certificate of title. The bill makes a number of other minor amendments to the Real Property Act.

The bill makes it clear that, unless otherwise specified, electronic documents that are lodged through PEXA are to be processed in the same way and according to the same legal considerations as conventional paper transactions and that the Real Property Act applies equally to paper and electronic conveyancing documents. This makes it clear that paper and electronic transactions will be on an equal footing and will have priority according to their lodgement date and registrability, without consideration for the means by which they were lodged. The bill also makes it clear that specific provisions enacted for electronic instruments and contained in Participation Rules made under the Electronic Conveyancing National Law New South Wales apply instead of current provisions in the Act that are suitable only to paper transactions.

For example, there are special requirements for digitally signing and certifying electronic transactions which apply instead of the current Real Property Act requirements for execution, attestation and certification of paper documents. The bill also makes a number of minor amendments to the caveat provisions of the Act, including an amendment to allow the Registrar General to specify an alternative to a statutory declaration for a caveator to verify a caveat. As it is not possible for a person lodging a caveat to swear a statutory declaration on an electronic caveat, the bill allows the Registrar General to approve an alternative means for a person lodging a caveat to verify that caveat, as is required under the Act.

National electronic conveyancing is the most significant reform to the conveyancing industry in 150 years and offers the prospect of significant efficiency and productivity gains in the practice of conveyancing. The Government is pleased to support and facilitate the continued implementation of this important reform. These types of advances brought forward by the O'Farrell Government are absolutely critical. We will see the State Government transformed in many ways into the future in relation to how customer service and the interface between the customer and government proceed in this State. It is going to happen quickly and it is happening now. We are seeing enormous inroads being made in relation to the use of smartphone technology and apps. But in this area, with the convergence of two systems, it becomes vital that we do this in a methodical and sensible way. That is why we need to amend the Real Property Act and why we must ensure that with this reform New South Wales is leading the way, as it is in all other jurisdictions. It is very pleasing to commend the bill to the House.

Debate adjourned on motion by Mr Richard Amery and set down as an order of the day for a future day.