

**REAL PROPERTY AMENDMENT (TORRENS ASSURANCE LEVY REPEAL)
BILL 2011**

Page: 629

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [11.09 a.m.]: I move:

That this bill be now read a second time.

The PRESIDENT: Order! There is too much audible conversation in the Chamber. Now that formal business has concluded, members who wish to conduct conversations can do so outside the Chamber. Members who remain in the Chamber should give the Minister their full attention. The Minister has the call.

The Hon. GREG PEARCE: Last year the former New South Wales Labor Government introduced a new tax by stealth. Under the guise of a levy attached to a legitimate lodgement fee, a new tax was imposed on homebuyers. We opposed the tax at the time, as we believed that additional property taxes hurt both homebuyers and the construction industry. It was a bad tax then, and it is still a bad tax. As we indicated before and during the election campaign, our firm intention was to repeal the levy. This piece of legislation gives effect to that commitment.

The Torrens Assurance Fund plays a key role in underpinning the security of the Torrens system of land registration that we have in New South Wales. The Torrens Assurance Fund is used to compensate landowners and others having an interest in land who are deprived of an interest and suffer loss or damage through fraud or an error of the Registrar-General. The Torrens system, backed by the Torrens Assurance Fund, allows home owners to have confidence in their land ownership. It simplifies the conveyancing process and it underpins the economy of the State. The Torrens Assurance Fund needs to be properly provisioned to satisfy its statutory function. Traditionally, it has been funded by a levy included within the lodgement fees paid to the Registrar-General. Before Labor's homebuyer's tax was introduced, the fund was provisioned by a flat \$4 payable on all Torrens dealings. This amount was reflective of the historical claims experience of the fund and was subject to regular review and adjustment in consultation with Treasury representatives.

Currently, the Torrens assurance levy comprises two components: a \$4 fee separately charged on all Torrens dealings and an ad valorem amount payable on transfers of land bought for more than \$500,000. The ad valorem component is calculated on a percentage of the purchase price over \$500,000 with the percentage increasing for a purchase price over \$1 million. The amount payable rises from \$500 on a property bought for \$750,000 to \$11,000 on land bought for \$5 million. As well, all funds collected through the levy have been remitted straight to Treasury and applied to the Consolidated Fund. This demonstrates that the Torrens assurance levy is not a genuine amount raised to support the Torrens Assurance Fund but, in fact, a tax.

The Real Property Amendment (Torrens Assurance Levy Repeal) Bill 2011 repeals all amendments made to the Real Property Act 1900 and the Real Property Regulation by the State Revenue Legislation Amendment Act 2010, which was the instrument used to introduce this tax, and reintroduces the provisions of the legislation as they were before the amendment. The bill will remove all reference to the Torrens assurance levy from the Real Property Act and will reintroduce section 134 (4) to enable the Registrar-General's prescribed lodgement

fees to include an amount to be paid to the Torrens Assurance Fund. This will ensure that sufficient amounts are set aside in the Torrens Assurance Fund as a separately constituted special deposits account, which will continue to be properly maintained to support the State guarantee of title in New South Wales. The Minister responsible for the administration of the Real Property Act 1900—that is me—will be charged with the responsibility of directing money to be paid into that account from fees paid to the Registrar-General.

Section 144 of the Real Property Act provides the power to make regulations for the purposes of the Act. The amendment made by the State Revenue Legislation Amendment Act 2010 expanded that power to enable the Real Property Regulation to prescribe the Torrens assurance levy. This provision also will be removed. Whilst the regulation-making power will continue to enable appropriate fees to be set, the fees, charges and expenses that can be prescribed will be limited to those that are recoverable by the Registrar-General in the administration of the Real Property Act. This restricted version of the regulation-making power ensures that it is not wide enough to enable a tax to be reintroduced at a later time without a further amendment of the Act.

The Real Property Amendment (Torrens Assurance Levy Repeal) Bill 2011 is to commence on 1 July 2011. I foreshadow that I propose to move a Government amendment to the bill to make sure that the bill takes effect on and from that date, that is, including 1 July 2011. This date was forecast in the Government's 100 Day Action Plan and was selected to give certainty to the property industry. The levy will not apply to transfers that are lodged for registration to give effect to a contract for sale of land entered into after 1 July 2011. The levy will continue to apply to transfers executed to give effect to a contract for sale of land entered into after 1 July 2010 but before 1 July 2011, even though the transfer might be lodged for registration after 1 July 2011. Unfortunately, there will be buyers who will incur a liability to pay the levy between the announcement of the proposed repeal and its final removal on 1 July 2011. Financial arrangements such as the Torrens assurance levy take time to unravel and precise transitional provisions are required to avoid uncertainty.

As well as amending the Real Property Act, the bill will amend the Real Property Regulation to remove the requirement to pay the separate Torrens assurance levy and its ad valorem component. This requires a readjustment of the fees payable under the Act, with an amount of \$4 to be added to the stated transaction fees. This will not create any real increase in the actual fees paid to the Registrar-General but will restructure the fees so that they include the amount to be paid to the Torrens Assurance Fund. In the first half of each year the Registrar-General reviews the fees payable under the Real Property Act. Any increases that are to be made are traditionally timed to commence from 1 July each year. The fees set out in the Real Property Amendment (Torrens Assurance Levy Repeal) Bill 2011 have been readjusted on the basis of the current fees payable and may be subject to further amendment before 1 July 2011 as a result of the annual fee review.

The Real Property Amendment (Torrens Assurance Levy Repeal) Bill 2011 fulfils the Government's commitment to New South Wales homebuyers that was made in its 100 Day Action Plan. It proves that we are a Government that can be trusted and that we have the commitment necessary to restore the economy of the State. The bill will remove a stealth tax without sacrificing the integrity of the Torrens Assurance Fund, which will continue to underpin the security of land titles in New South Wales. I commend the bill to the House.