

REAL PROPERTY AMENDMENT (ELECTRONIC CONVEYANCING) BILL 2014

Bill introduced on motion by Mr Dominic Perrottet, read a first time and printed.

Second Reading

Mr DOMINIC PERROTTET (Castle Hill—Minister for Finance and Services) [4.33 p.m.]: I move:

That this bill be now read a second time.

The Real Property Further Amendment (Electronic Conveyancing) Bill 2014 facilitates the implementation of electronic conveyancing in New South Wales by aligning paper and electronic conveyancing processes. The reforms in the bill will facilitate a smooth transition between the two mediums, paper and electronic, deliver efficiency savings, and avoid additional complexity and costs to the conveyancing industry. National electronic conveyancing commenced in New South Wales on 8 October 2013 on a limited basis with mortgage-only transactions being lodged by a few banks. A major expansion of electronic conveyancing began on 10 November with the introduction of transfers, caveats and withdrawals of caveats to the electronic system. Adding this functionality to the system opens electronic conveyancing to solicitors and licensed conveyancers, and to additional financial institutions. Importantly, it also introduces real-time electronic settlement functionality through the Reserve Bank—a world first for conveyancing systems.

National electronic conveyancing introduces a number of new practices that are different from those that currently apply in paper conveyancing. The cost and complexity of conveyancing would increase as a result of the necessity to operate with two different processes, especially with the possibility of a solicitor or conveyancer needing to backtrack and take different steps if a transaction has to change from electronic to paper or from paper to electronic. This need to change will likely be common in the first few years until electronic conveyancing is widely adopted. This is because all four parties in a typical conveyancing transaction—the discharging mortgagee, the vendor, the purchaser and the incoming mortgagee—all need to be on the electronic system or a transaction cannot proceed electronically.

The key reforms in this bill allow the adoption of a single conveyancing process, regardless of whether a transaction is electronic or paper or changes mid-transaction, by introducing to paper conveyancing new practices such as verification of identity, client authorisations and standardised certifications to align with the new requirements for electronic conveyancing. These reforms, together with the introduction of priority notices, also provide an enhanced risk mitigation framework for conveyancing generally that will benefit everyone in conveyancing. It will also facilitate the phasing out of paper certificates of title, which will become an anachronism as electronic conveyancing is adopted over the coming years.

The bill introduces a new section 12E, which allows the Registrar General to make conveyancing rules that will parallel the participation rules for electronic conveyancing that apply nationally under the Electronic Conveyancing National Law and apply those practices in paper conveyancing. The

conveyancing rules will deal with matters such as the requirements for identification of clients, the use of client authorisations and standardisation of the certifications that are required on documents lodged for registration with the Registrar General. Currently in New South Wales we have formal requirements for verification of identity that apply in electronic conveyancing, formal requirements for a mortgagee to identify the borrower before registering a mortgage and formal requirements for a witness to a document to identify the party whose signature is being witnessed if they have not known that person for more than 12 months.

In addition to those formal requirements, solicitors and licensed conveyancers have an informal requirement to know their client as part of professional due diligence. Under the reforms to be introduced by this bill, a single verification of identity framework will be introduced to apply to conveyancing generally. It is intended that the same requirements will apply in conveyancing nationally. As a result, practitioners will know what requirements apply regardless of the type or location of the conveyancing transaction. This standardisation of verification of identity frameworks will assist practitioners, who will have only one process to comply with. It will also make conveyancing more secure for all participants as everyone involved in a transaction will know what is expected of them and of the other parties in the transaction.

The verification of identity requirement is for solicitors and conveyancers to take reasonable steps to verify the identity of their client. The reasonable steps regime allows practitioners the flexibility to adapt to different circumstances. What constitutes reasonable steps may vary according to the circumstances and may require the exercise of some professional judgement by practitioners. However, if a practitioner wants to have more certainty about compliance with the requirement, there is a verification of identity standard, developed and agreed with stakeholders nationally, and anyone following that national standard is deemed to have taken reasonable steps for the purposes of complying with verification of identity requirements.

The second of the electronic conveyancing practices to be introduced to paper conveyancing is the use of the client authorisation. A client authorisation is a document signed by the client to authorise their solicitor or conveyancer to sign conveyancing documents on their behalf. It was introduced in electronic conveyancing to allow a solicitor or conveyancer to digitally sign an electronic document on the client's behalf because it is not economical or practical for every party to a conveyancing transaction to be required to obtain digital signing credentials to sign electronic documents. In some respects a client authorisation is similar to a power of attorney, but it is specifically distinguished from a power of attorney so that, unlike a power of attorney, it is not required to be registered prior to dealing with the land.

Accordingly, obtaining a client authorisation is an essential step in the lead-up to effecting an electronic conveyancing transaction. However, particularly in the early days of electronic conveyancing, parties are unlikely to know whether all parties are participants in the electronic system so as to allow the transaction to be completed electronically. The introduction of client authorisations in the paper as well as in the electronic environment will allow a smooth transition between the two lodgement mediums.

If a transaction has been prepared with the intention that it proceed electronically and it is

subsequently discovered that it cannot, the solicitor or conveyancer will be able to rely on the existing client authorisation to proceed in the paper environment without needing to have the client come in and sign a new set of documents. It is important to note that the client authorisation does not replace any retainer or other agreement between the solicitor or conveyancer and their client. Importantly, the bill also provides that a client authorisation made under the Electronic Conveyancing National Law is effective under this legislation.

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New sections 107 and 108 are introduced into the Real Property Act that parallel existing provisions in the Electronic Conveyancing National Law, providing for the nature and effect of client authorisations as they apply on paper. The next component of the reforms contained in the bill relate to the standardisation of the certifications that are required on dealings lodged for registration under the Real Property Act, whether the dealing is lodged electronically or on paper. Currently, in paper documents certifications are required by the parties as to the correctness of the transaction and by witnesses as to the identity of the person whose signature they have witnessed. Expanded certifications are required in electronic conveyancing relating to the conduct of verification of identity and the holding of a client authorisation and any other evidence required to support the transaction. These are in addition to the normal certification as to correctness.

With the introduction of verification of identity and client authorisations into paper conveyancing, the certifications will be standardised based on the national model using the certifications that are set out in the participation rules for electronic conveyancing. The final significant reform in the bill is the introduction to New South Wales of priority notices. A priority notice is a notification lodged with the Registrar General of the intended registration of specified dealings in respect of the land. The priority notice reserves the priority of the dealings set out in the notice and to that end will temporarily prevent the registration of other dealings with the subject land in order to preserve the priority of the dealings listed in the notice. Priority notices will protect the priority of the subject dealings for a period of 60 days, with a once only option of extending priority for a further 30 days should there be unexpected delays in lodging the protected dealings.

The objectives for introducing priority notices include providing greater certainty to the transaction for which priority is reserved, alerting interested parties who search the register to the fact that an intended dealing or transaction is pending, and assisting in fraud prevention as details of a pending transaction will appear on a search of the register and thus increase the likelihood of a fraud being detected. While priority notices are a useful tool for conveyancing practitioners, they are also being introduced as an added safeguard that will assist in protecting parties' interests when moving towards an electronic environment and the removal of paper certificates of title. A priority notice provides the confidence that incoming parties at a settlement need to assure them that they are protected prior to registration of the transaction. This confidence is currently provided by taking possession of the certificate of title at a physical settlement.

While the lodgement of a priority notice will be optional, it is expected that parties buying a property will seek to protect their interests to the full extent possible by lodging a priority notice. Therefore the use of priority notices will become an integral consideration in prudent conveyancing practice. The bill also includes some minor amendments including providing for the appointment

and functions of Deputy Registrars General and, for the sake of continuity, to allow a Deputy Registrar General to act in the place of the Registrar General when he or she is absent from duty. I am pleased to support this bill and its facilitation of the national system of electronic conveyancing, and I commend it to the House.

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