

SECOND READING SPEECH – THE HON BRYAN GREEN

LAND TITLES AMENDMENT BILL 2012

Mr Speaker,

I move that the Bill be now read a second time.

The Bill before the House contains amendments to the *Land Titles Act 1980* (the Act) that improve the practical implementation of that Act, and reflect changes in practice and technology since that Act's introduction in 1980.

It is now time for the Act to be updated to reflect the changes that have occurred, but also to prepare for the future, primarily the introduction of national electronic conveyancing.

National electronic conveyancing forms part of the Council of Australian Governments microeconomic reform agenda. The objective is to introduce the ability for a purchase and sale of land anywhere in Australia to be undertaken electronically with the relevant instruments lodged electronically in the appropriate Land Titles Office. This means that a solicitor in Burnie can represent a client from Ulverstone in the purchase of a property in Cairns.

In line with Government's policy of ensuring that legislation remains relevant and effective, the Recorder of Titles initiated a review of the Act.

As part of an extensive review process, submissions were sought from the primary users of the Act, including solicitors, conveyancers, surveyors, financial institutions and councils. Public comment and submissions were sought on three separate occasions. Twenty-two submissions were received in total. Land Titles Office staff also played an important role in the process by undertaking a section by section detailed review of the Act, thereby identifying potential amendments.

As a result of this process, six major amendments were identified.

The first relates to amendment of the Assurance Fund provisions to allow the Minister to approve claims to the value of \$10,000 or less without recourse to the Governor-in-Council.

Under the Act, an assurance fund is established to support the guarantee of title provided by the State. The fund is designed to support those who suffer loss or damage due to the operation of the Act.

The current process for admitting a successful claim involves the Recorder of Titles admitting the claim and certifying accordingly to the Minister with the Governor in his discretion issuing a warrant to the Treasurer for payment of the amount certified. As Members may well imagine, where the facts of the claim are complex, or the Recorder of Titles requires further information in support of the claim, the time between a claim being made and payment of the amount certified can be considerable.

All of the recent claims, bar one, have been for amounts in either the hundreds of dollars or early thousands of dollars. The process of admitting a claim has been found to be unnecessarily lengthy for these amounts, and has prevented an applicant from receiving payment of their compensation in a timely manner.

Members will note that the Amendment Bill promotes a more efficient and timely process for claims against the fund for less than \$10,000. The new process now allows the Recorder to admit a claim and so certify to the Minister. The Minister can then, at his or her discretion, issue a warrant to the Treasurer for payment of the claim.

The proposed amendment ensures that successful claimants for amounts less than \$10,000 receive their monies in a timely manner whilst ensuring that the process retains sufficient scrutiny through the oversight of both the Recorder of Titles and the Minister.

Members should note that the Assurance Fund process remains unchanged for claims over \$10,000.

The second major amendment allows for the lapsing of caveats, in specific instances, without the need for a dealing, such as a mortgage, transfer or discharge of mortgage, to be lodged.

Currently, upon lodgement for registration of a dealing, the registration of which is prevented by a caveat, and upon application of the registered proprietor against whom the caveat was lodged, the Recorder will serve on the caveator a notice of the Recorder's intention to register the dealing upon the expiration of 28 days after the service of the notice.

The notice allows the caveator 28 days in which to take action in the Supreme Court to validate the claim. If the caveator does not take action within that 28 days, the caveat will lapse and the dealing will be registered. If the caveator does take action in the Supreme Court and is unsuccessful the caveat will also lapse and the dealing will be registered.

The Bill introduces a section similar to section 74J of the *New South Wales Real Property Act 1900* which provides that a caveat can be cancelled without the need for a dealing to be lodged by the registered proprietor. Essentially, the amendment does not limit the lapsing of a caveat to when the registered proprietor deals with that land.

This amendment successfully balances the interests of both the registered proprietor and the person on whose behalf the caveat has been lodged. A registered proprietor has the opportunity to have a clear title even when they do not necessarily want to deal with the land, whilst the person on whose behalf the caveat is lodged retains the right to substantiate their caveat, and when able to do so the caveat remains.

The third major amendment relates to boundary rectifications under section 142.

Section 142 establishes a procedure for holding an inquiry into boundary rectifications. The current process provides that where a person has an adverse, opposing, claim to the same land subject to the boundary adjustment, the Recorder is required to hold an inquiry. A provisional order must then be made. If an objection is raised to the provisional order the Recorder is required to hold a hearing into the objection and a final order is then made. The final order is appealable to the Supreme Court.

Adverse claims and provisional orders will be replaced with objections to the application. Where an objection is lodged against the application, the Recorder will be required to investigate the objection prior to determining whether a hearing is required and subsequently making an order. The Amendment Bill replaces the requirement for the Recorder to make separate provisional and final orders with the Recorder making one order only which is appealable to the Supreme Court.

The investigation process is similar to that provided for under the *Strata Titles Act 1998*. Where an objection to an application has been lodged, the Recorder may hold an investigation using powers that provide for a more efficient and effective process of dealing with the objection.

Section 142 of the Act will also be amended to clarify that the section applies to plans sealed under the *Local Government (Building and Miscellaneous Provisions) Act 1993*. The clarification only applies to those sealed plan amendments that are minor in nature and do not materially change the scheme of the subdivision.

This amendment reflects current practice in that section 142(1)(b) has been used in cases where an error in plan documentation or in boundary re-establishment of a plan sealed under the *Local Government (Building and Miscellaneous Provisions) Act 1993* necessitates rectification, but that rectification does not materially change the scheme of the subdivision.

The relevant council will in all cases be notified of the amendment under section 142.

Finally, section 142 will be amended to clarify that the Recorder of Titles can only make an application under the section where no interested person exists that can apply.

The aim of these amendments is to remove unnecessary delays in the decision making process under section 142 to the benefit of all parties involved in the process.

The fourth major amendment provides the Recorder with the power to require advertising or notice of intended dealings with land, where the Act does not specifically require a person to do so.

While some sections specifically require advertising or notice to be given, for example title by possession, there are times that the Recorder needs a notice to be sent to an 'interested' party on the grounds of procedural fairness. Applicants have argued that the Recorder has no power to do so. In light of the amendment of section 160, parties can now no longer argue that the Recorder does not have the power to require advertising or giving notice, even when the Act is silent.

The amendment is consistent with the doctrine '*audi alterem partem*' - to give notice to parties who might be injured, even though there is no specific requirement to do so by statute.

The provision of notice or the requirement to advertise allows an interested party to be alerted to the dealing and an opportunity to be heard, which is consistent with the principles of natural justice.

The fifth major amendment provides for the inclusion of omitted easements as an exception to indefeasibility.

It should be noted that at the present time a registered proprietor holds his land free from all easements which are not registered on his title, with some exceptions provided for under the Act, including those easements that stem from an Act or operation of the law or statute and equitable easements.

The exceptions do not include easements legally created under the Act and registered on a folio of the Register, but which are later omitted, for example when a new folio of the Register is issued. That is, the new folio of the Register does not include an easement that was included on the previous folio of the Register.

The Act will be amended to include this circumstance in the list of exceptions. This amendment rightfully protects the interests of a person who has the benefit of a legally created easement which through no fault of their own has been omitted from a folio of the Register.

The sixth and final major amendment extends the provisions for the electronic lodgement of dealings. Currently, the Act provides for the electronic lodgement of priority notices, caveats, plans, withdrawals of priority notice or withdrawals of caveat.

In preparation for the introduction of national electronic conveyancing the Act will be amended so that, at the discretion of the Recorder, all dealings and instruments that can be lodged under the Act or any other Act can be lodged electronically.

Tasmania's experience with electronic lodgement of priority notices, caveats, withdrawal of priority notices and withdrawal of caveats sees it well-placed to participate in national electronic conveyancing.

It may be of interest to Members to note that Property Exchange Australia, the first electronic lodgement network, is due to commence testing of the first stage of lodgements by the end of this year. Stage 1 of lodgements is expected to be in full production early to the middle of next year.

In light of the introduction of national electronic conveyancing it is proposed that the requirement that a certificate of title must be issued on the creation of a folio of the Register is replaced with the requirement that a certificate of title may be issued on the creation of a folio of the Register.

Paper certificates of title do not fit with an electronic conveyancing system. Electronic folios of the Register are now the only up to date source of registered estates or interests in land. In this respect the role of paper certificates of title is diminished.

A prudent solicitor or conveyancer should search the folio of the Register to determine who has authority to deal with a piece of land rather than rely on who holds the paper certificate of title.

This amendment is the first step to full removal of paper certificates of title and is consistent with the current practice of some of the major banks who have asked the Recorder of Titles to 'hold' the certificate of title rather than store it in their store rooms.

These are practical amendments that align the Act with current and future needs of the conveyancing industry, their clients and government.

The Bill contains other amendments to reflect that the Register is now in an electronic form, to continue aligning the Act with current office practice, and to promote consistency between provisions.

In summary, the Bill amends the Act to improve its practical application. The amendments contained in the Bill ensure that the Act reflects current practice and procedure whilst also accommodating future events such as the introduction of national electronic conveyancing.

Mr Speaker, the Government fully supports the introduction of this Bill.

I commend this Bill to the House.