

SECOND READING SPEECH

Conveyancing Amendment Bill (No. 2) 2012

Mr Speaker, I move that the *Conveyancing Amendment Bill (No. 2) 2012* be read a second time.

The Conveyancing Amendment Bill (No. 2) introduces a prohibition on advertising by a licensed conveyancer during any period for which their licence is suspended. The Bill also provides for certain undertakings made by a licensed conveyancer to be enforced by the Court. Further, it provides for persons concerned in the management of a body corporate to be held accountable for offences under the *Conveyancing Act 2004* committed by the body corporate.

Mr Speaker, the *Conveyancing Act 2004* regulates the business of conveyancing and provides for the licensing of individuals, other than legal practitioners, as conveyancers. The Conveyancing Act was introduced to promote greater competition in the conveyancing market by facilitating the establishment of conveyancing businesses and remove the monopoly on conveyancing work previously held by the legal profession.

Under the Act, a 'conveyancer' is a person who is not a legal practitioner and who carries on business that involves the preparation, for fee or reward, of dealings within the meaning of the *Land Titles Act 1980*.

Mr Speaker, in the course of performing conveyancing work, conveyancers and legal practitioners are frequently required to give undertakings relating to the legal transfer of real property. For example, an undertaking may be made to pay rates and land taxes from the proceeds of a sale.

Undertakings given by legal practitioners are enforceable in court. However, there is currently reasonable doubt as to whether undertakings given by licensed conveyancers are

similarly enforceable. Indeed, it has become practice that some legal practitioners are refusing to accept undertakings given by conveyancers.

In practice, the problem has been overcome where the conveyancer obtains the written authority from their clients to give undertakings or enter into a formal contract with a legal practitioner. However, this imposes additional burdens that are not applied to legal practitioners.

To address this issue, the Bill allows licensed conveyancers to give undertakings and guarantees during the period of a conveyance, which are legally enforceable in a court of law.

Where an undertaking or guarantee is given and is not carried out, the Bill enables the person to whom the undertaking or guarantee is given to apply to the Supreme Court or the Magistrates Court (Civil Division) for an enforcement order, including orders for compliance with the undertaking.

Mr Speaker, the Bill introduces a prohibition on advertising by a licensed conveyancer during any period for which the conveyancer's licence is suspended. This amendment also prohibits another person from advertising or in any way representing that the suspended licensee is a licensed conveyancer during the period of the licence suspension.

This amendment has been introduced following complaints by the Law Society of Tasmania regarding the conduct of a law firm advertising that they employ a 'licensed conveyancer' when the person's licence was in fact suspended under the Conveyancing Act. While the person was a licensed conveyancer, the Conveyancing Act provides that a licence is suspended if the person does not have professional indemnity insurance. The person did not have professional indemnity insurance as he was not carrying on the business of conveyancing and was simply acting on the instructions of his employer.

As the person's licence was suspended, it was misleading to suggest in advertising that the person was a licensed conveyancer. Further, the person was employed as a conveyancing clerk and therefore only permitted to carry out actions on the instruction of the legal practitioner, who is wholly responsible for the actions of the clerk.

The purpose of the Conveyancing Act was to facilitate the establishment of conveyancing businesses in competition with the legal profession. It was never intended as a vehicle by which law firms would compete with one another.

While it might be possible to prosecute the conveyancing clerk for misrepresentation, there would be some cost in doing so and a satisfactory outcome in court is not certain. The amendment has therefore been included to prevent a person from advertising themselves as a licensed conveyancer when their licence is suspended.

Mr Speaker, these amendments are supported by the Law Society of Tasmania.

The Bill also includes an amendment that provides that where a body corporate commits an offence under the Conveyancing Act each person concerned in the management of the body corporate is taken to have committed the offence unless the person establishes that the offence occurred without their knowledge or consent, or where the person can prove that they used due diligence to attempt to prevent the body corporate committing the offence.

I commend the Bill to the House.