

[1.45 pm]

McCUTCHEON, Mr Murray, Chairman, Property Law Reform Alliance

WATERHOUSE, Mr Paul Alexander, Joint Secretary, Property Law Reform Alliance

CHAIRMAN—Welcome. Do you have any additional information about the capacity in which you appear?

Mr Waterhouse—I represent the Property Council as well on the alliance.

CHAIRMAN—Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Your submission has been received and authorised for publication. Would one of you like to make a brief opening statement of, say, five minutes and then we will proceed to some questions?

Mr McCutcheon—The Property Law Reform Alliance is an alliance of peak property bodies which has been brought together for the obvious purpose set out in our name. We have a number of members, I think, in our submission. That has been added to. Mr Waterhouse might like to add the new members to that list.

CHAIRMAN—Maybe you could forward them to us.

Mr Waterhouse—I can table this document if you like.

CHAIRMAN—Thank you.

Mr McCutcheon—It arose out of a desire by the Law Council's property group at the time which was pursuing a project of property law reform and it held a number of conferences with a number of diverse bodies over a period of time. That generated some momentum and, around 2002, it resulted in, with the assistance of the Property Council of Australia, forming what our alliance is at present.

We see property law as being an important segment in the economy, and the World Bank has identified that security of land title is one of the fundamental elements to a wealthy society. In Australia, it is a national issue but it is a state responsibility. That is where the inefficiencies creep in and I guess was the impetus for trying to do something about it.

CHAIRMAN—You would not want to adopt the New South Wales model.

Mr McCutcheon—I am not sure there is any particular jurisdiction's you would want to adopt on its own. Best practice, I think, is found with bits and pieces everywhere and not necessarily in any jurisdiction, but there is a way to go. We decided to do something about it and with the Property Council of Australia decided that our objective would be uniform practices,

procedures and statutory instruments in property law delivery in a cost-effective, efficient manner for property transactions. It sounds very simple but it proves quite difficult. We set some outcomes that we would like to see achieved, and we have gone a fair way down the track of doing some of those but we still have a long way to go. The seven we identified were efficient land titling, and to that extent, it was catalyst to starting a look, particularly by the registrars of title, at a uniform Torrens system. They have now adopted that as a matter of principle that they should seek to go down that path.

The alliance is part of that in that we addressed the registrars, I think as a consequence of that, with an initiative originally coming from the Victorian Registrar of Titles. The rest of the registrars have adopted that and, after a couple of conferences, that seems to be embedded as a project for them. It is a more difficult one for them than the electronic conveyancing, which is another project that I will mention in a moment; but, nevertheless, that seems to be under way and, again, the Law Council's property group has met and tried to identify what the differences are with the Torrens system between the different jurisdictions.

CHAIRMAN—All jurisdictions, barring the ACT, have the Torrens system, don't they?

Mr McCutcheon—The ACT has a Torrens system, as I understand it, as well.

CHAIRMAN—Even though there is no freehold?

Mr McCutcheon—It is all leasehold but it is still a registered-title system.

CHAIRMAN—I see.

Mr McCutcheon—That is what distinguishes it from some of the systems overseas and what still applies in some jurisdictions, where you had the original grant from the Crown—

CHAIRMAN—The old system.

Mr McCutcheon—and you had to follow through the title 150 or 200 years.

CHAIRMAN—And you never had absolute title; you had the best claim to title.

Mr McCutcheon—That is correct—which is not a good system. But, nevertheless, it applies in many jurisdictions in the world and to back it up, of course, you need an insurance system. That is generally what the Americans have. So they have a different way of going about it.

The other thing that we identified is streamlining of conveyancing. Electronic conveyancing was a project that the Victorian titles office had. I think we have been successful in influencing that to become very much now a national project; all the Australian registrars are joining in that as a project. At present, they have set up an office in Melbourne called the National Electronic Conveyancing Office, with the objective of making the system national so that anyone in any jurisdiction will be able to operate the system in another jurisdiction. That is presently being funded by, on an interim basis, the New South Wales titles office. It is intended that all the offices, as soon as they get their budget allocations, will contribute to make up for the funding that has come from New South Wales.

Mr Waterhouse—If I can just add to that, there was a danger at one point where there were, I think, four different jurisdictions looking at electronic conveyancing. We had a big concern that there would be four different systems set up. So it is quite a big leap that now there is that discussion between the states, because it will help in terms of greater uniformity of process.

Ms ROXON—It does not really need any national legislation or anything particularly to make it happen. It seems to me that, although the steps have been slow, essentially it can be delivered through the state systems that you have; you just want those state systems to talk to each other a bit more. I have a bit of trouble getting my head around not the reforms that you are interested in but why it is one of the areas that we would prioritise in an inquiry like this when, by its nature, with the sort of property that you are talking about, we know where it is and we know which state it is in. There are not the same sort of interstate problems. Of course I know that there are businesses that operate in all states that would like to be able to have one system in place. But what is the driver for reform other than reform that obviously makes the systems work better within each of the states? I do not appreciate that in the same way that maybe some of the submissions we have had in other areas do.

Mr Waterhouse—It is a bit like the Corporations Law reforms in that the current system, with eight different approaches to property, means that there is quite a significant impediment to international and national investment processes. Our concern is that unless there is federal involvement in that, not necessarily through legislative reform but through working with the states and territories and encouraging greater communication between them, there is a danger that we could end up entrenching further the eight different systems.

Ms ROXON—But I do not understand how it is at all like the corporations reform when the key driver for that was corporations that were operating between states.

Mr Waterhouse—But, again, a lot of the property transactions are occurring with bodies that may be headquartered in Sydney, Melbourne, Perth or wherever that are operating across borders. The process of operating across borders means that they could require a different legal team, who they may not have a relationship with, in each jurisdiction.

Ms ROXON—Yes, I understand that.

Mr Waterhouse—There could be pitfalls that they have not come across. They may have to hire completely new staff to deal with the process. So, from an efficiency perspective, it ends up being quite a headache for a lot of property companies, and for companies that have property holdings—it may not be their main focus but they end up having to get a lot of advice just to get transactions through.

Mr McCutcheon—Increasingly, because the clients are national, they are looking for a national solution, and that is what is driving it. Even the individuals have difficulties when they are moving from one state to another. They have to line up settlements and whatever, and they are dealing with financiers who have different requirements in different jurisdictions which do not match up.

CHAIRMAN—It seems to me that you are in fact moving in the direction of, in a practical way, eliminating some of the differences. What would you like to see us incorporate in our report with respect to helping you achieve what seems to me to be quite desirable objectives?

Mr McCutcheon—I think the endgame for us would be a single legislative instrument which dealt with property law. That is a big ask for all sorts of constitutional and other issues, but at the end of the day that would be the best outcome, I think, from a consumer's perspective.

CHAIRMAN—The abolition of the states.

Mr McCutcheon—No.

Ms ROXON—He tries to get that in every time.

Mr McCutcheon—I think the states actually have quite a role because, in many ways, they are more accessible than the federal system via Canberra. The difficulty is that they all tend to go off in different directions. I am not sure what the balance is but, for the time being at least, most people would say that the idea of having a centralised system is not ideal in terms of communication, but it is in terms of having the final rules.

Mr MURPHY—Given that property law is regulated by the state and territory governments, I presume you see there is a major role for the Commonwealth government in achievement of uniform property laws in Australia.

Mr McCutcheon—We do. Given the current constitutional and political environment, it is one in which the Commonwealth needs to tread fairly carefully, of course.

Mr MURPHY—Why?

Mr McCutcheon—Unless you get a constitutional change—and, of course, that is always an option that is open and is mentioned in your background paper—I think that a cooperative approach is more likely to bring an outcome in the short to medium term.

Ms ROXON—In your submission you said you are doing some work on a model real property act. Can you give us an update? How far advanced is that?

Mr McCutcheon—We have gone in terms of the Torrens systems—

Ms ROXON—Was that what you were referring to in the work?

Mr McCutcheon—Yes, but our objective is to go further than that. The title is the end part of the process. There is all the upstream part dealing with the negotiations, contract, transaction, settlement and those sorts of transactions which also need to be fixed up. Leasing is another area that, again, is part of that background.

Ms ROXON—Would the model act that you are working on encompass all those stages?

Mr McCutcheon—It would attempt to.

Ms ROXON—Is it at a fairly preliminary stage?

Mr McCutcheon—Very.

Ms ROXON—Do you have a draft?

Mr McCutcheon—I cannot give you a draft as we speak.

Mr Waterhouse—We have a number of working groups that are working on key aspects of it—some of which would be part of a model act; some of which would be part of other reform initiatives. I guess to some degree we have put it onto the backburner in order to encourage a couple of the state jurisdictions to reform their processes. It is certainly not a project we have backed away from. It is just that it takes time, effort and resources, and we are trying to source those.

CHAIRMAN—Thank you very much for appearing before us today.

Mr McCutcheon—Thank you very much.