



State Revenue Legislation Further Amendment Bill.

Second Reading

Mr BRYCE GAUDRY (Newcastle—Parliamentary Secretary) [10.53 a.m.], on behalf of Mr Craig Knowles: I move:

That this bill be now read a second time.

The main purpose of this bill is to make amendments to the Duties Act 1997, the Fines Act 1996, the First Home Owner Grant Act 2000, the Land Tax Management Act 1956, the Pay-roll Tax Act 1971, the Taxation Administration Act 1996 and the Unclaimed Money Act 1995. I will deal with the amendments to each Act in turn. The bill amends the Duties Act 1997 in respect of duty on the transfer of dutiable property, lease duty and mortgage duty. One significant purpose of the bill is to impose duty on the statutory vesting of land to overcome the current situation where a change of ownership occurs but duty is not currently payable. Mergers of entities and statutory vesting are increasingly being used as mechanisms for changing ownership of land. The bill will ensure that such transactions will become liable to duty. Exemptions have been included for those vestings where it is inappropriate to tax, such as to an executor on death. This amendment is consistent with the approach taken by Queensland and soon to be taken by Western Australia.

The bill clarifies anti-avoidance provisions relating to arrangements that prevent the value of property being artificially reduced for duty purposes. Generally, a transfer of goods alone is not subject to duty. Goods are only dutiable property if they form part of a transaction that includes other dutiable property. The current Act provides a discretion for the chief commissioner to disregard the value of goods if satisfied that it would not be just and reasonable to charge duty. The provisions have potential for abuse where goodwill of little or no value is being transferred. The bill removes this discretion in cases where goods are used in connection with a business and goodwill forms either the whole or part of the other dutiable property in the transfer.

A practice has emerged whereby splitting of leases by term or parties has resulted in a reduction in the duty payable because no duty is payable on leases when the total rent is less than \$20,000. The bill introduces provisions to aggregate leases between the same or associated parties for consecutive terms over the same property. In these situations the combined leases will be subject to duty. The Duties Act was amended last year to strengthen an anti-avoidance provision dealing with the use of long-term leases that avoid or minimise transfer duty. These anti-avoidance provisions have been effective and will be retained. However, the other States have addressed these practices by also charging the transfer rate of duty on lease premiums and it is appropriate that New South Wales imposes transfer duty on lease premiums.

The bill provides an exemption from stamp duties for the joint government enterprise being established to allocate funds from the New South Wales, Victorian and Commonwealth governments for water savings projects, to facilitate environmental flows for the Murray and Snowy rivers. The bill also makes a number of minor statute law amendments to replace references to repealed Acts and to clarify the mechanism by which forms are approved by the chief commissioner. Current contractual arrangements made by the Infringement Processing Bureau [IPB] with its 400 or more clients extend beyond 1 October 2003 when the IPB was transferred from the New South Wales police service to the Office of State Revenue [OSR]. The IPB became a unit within the State Debt Recovery Office, a division of the OSR. The bill authorises the State Debt Recovery Office to enter into such arrangements with new clients. The bill also makes consequential amendments to references that describe the IPB as being part of the New South Wales police service.

The bill provides that in the case of dual occupancy or multiple occupancy residences constructed under a single contract, eligibility for a grant will be considered on each residence separately. The bill also removes an unintended opportunity for a person to apply for a grant in relation to a further interest in his or her current residence. This is consistent with amendments proposed in other jurisdictions. The bill also clarifies the residency test for the grant by requiring the applicant to reside in the home for a continuous six-month period. The bill amends the Act to remove provisions that can require applicants who are paid the grant in respect of terms contracts to return the grant solely because the transaction is not completed by registration of the transfer. The bill confirms eligibility for the grant for a shared ownership scheme with the Department of Housing where tenants buy a 75 per cent interest in the home with an opportunity to purchase the remainder at some time in the future.

The bill amends the Land Tax Management Act 1956 provisions relating to the land tax concession for an owner's principal place or residence. The amendments will allow an owner to claim the concession for two residences where the owner has bought a new residence and is in the process of selling the existing residence, but has not been able to complete the sale by the taxing date. The bill will also remove certain restrictions on the current exemption on land where a new family residence is being built or an existing one is being refurbished, provided the owner takes up residence in the completed house within two years and remains in residence for at least six months. The bill will allow a principal residence to be used for incidental business purposes, such as the use of one room as a home office or

workshop, without losing the principal place of residence exemption from land tax.

The bill clarifies an existing concession where the owner is absent from the home for extended periods, but resumes occupation within six years. Under the amendments an owner will be allowed to rent the home for a period of up to six months in any tax year before the concession ceases to apply. The amendments also impose a condition that the owner must occupy the home for at least six months after resuming occupation or forfeit the concession for the entire period of the owner's absence from the home. The bill allows each family, including dependents under 18, a concession for only one property, except when buying a new principal place of residence.

This amendment restricts tax minimisation practices, such as transferring small interests in land to tenants, particularly family members. It also removes uncertainty by denying the exemption for two properties where a couple claim exemptions for different principal places of residence. This restriction will not apply to couples who are permanently separated or to family members over 18 years of age. The bill provides an exemption from land tax for the joint government enterprise being established to allocate funds from the New South Wales, Victorian and Commonwealth Governments for water saving projects to facilitate environmental flows for the Murray and Snowy rivers.

The bill closes a loophole in the Pay-roll Tax Act 1971 that allows an employer to avoid payroll tax on wages paid outside Australia in relation to services provided by an employee in two or more States. The bill provides an exemption from payroll tax for the joint government enterprise being established to allocate funds from the New South Wales, Victorian and Commonwealth Governments for water saving projects to facilitate environmental flows for the Murray and Snowy rivers. Following the success of the "phoenix" company provisions inserted into the Pay-roll Tax Act in November 1999, the Government will introduce general provisions into the Taxation Administration Act that will enable recovery of taxes payable under State revenue laws, from directors and former directors of corporations in certain circumstances.

The bill also applies the definition of "decision" contained in the Administrative Decisions Tribunal Act to the Taxation Administration Act to provide certainty for taxpayers applying for a review of decisions made by the chief commissioner. The bill makes a number of minor amendments to the Taxation Administration Act and deletes an obsolete provision in relation to "reciprocal taxation law", following the insertion of the Revenue Laws (Reciprocal Powers) Act 1987 provisions into the Taxation Administration Act 1996 and the consequential repeal of that Act.

The bill increases the minimum amount required to be returned under the Unclaimed Money Act from \$20 to \$100. This means that small amounts up to \$100 will no longer be given to the Government if unclaimed after six years. About 2 per cent of the small amounts paid to the Government in 2002-03 were reclaimed by the owners, that is, 400 amounts totalling \$20,000, or an average of \$50 per claim, out of a total of 20,000 small amounts totalling \$800,000 lodged with the Government. This amendment brings New South Wales into line with the Commonwealth, Victoria and South Australia. I table a summary of the bill for the assistance of honourable members and seek leave to have it incorporated in *Hansard*.

Leave granted.

SUMMARY OF THE BILL

Schedule 1 Amendment of Duties Act 1997

Transfer Duty

The amendments impose transfer duty on a statutory vesting of land in New South Wales, specifying various circumstances in which a statutory vesting occurs and exempting from duty the vesting of dutiable property in a legal personal representative of a deceased person. See **Schedules 1 [2], [3], [4] & [10]**

The amendments replace section 24 of the current Act to clarify that arrangements made for a collateral purpose of reducing the amount of duty otherwise payable are to be disregarded. See **Schedule 1 [6]**

The amendments limit the Chief Commissioner's discretion to exclude the value of goods from the dutiable value of property when assessing duty on transfers of property in cases where the goods are used in connection with a business in respect of which the goodwill of the business is, or is part of, the dutiable property. See **Schedule 1 [7]**

Lease Duty

The amendments impose duty at the rate applicable to the transfer of dutiable property on the premium paid or payable for a lease with the exception of a premium paid on a lease of premises in a retirement village, which are exempt from duty. See **Schedules 1 [14] & 1 [12]**. The Bill also makes some consequential amendments. See **Schedules 1 [13] & [17]**

The amendments also provide for the aggregation of leases that have been split to bring them under the threshold

exemption of a total rent cost of not more than \$20,000 per annum. For the purpose of calculating lease duty, leases between the same or associated persons over the same property for consecutive terms or terms that are not more than 3 months apart, will be aggregated. See **Schedule 1 [18]**. The Bill also makes some consequential amendments. See **Schedules 1 [15] & [16]**

Mortgage Duty

The Bill clarifies that security interests in land are not liable to mortgage duty and also readdresses the circumstances in which a collateral mortgage forming part of a package of securities that applies to land in New South Wales and land in other jurisdictions is chargeable with duty when an advance or further advance is made. See **Schedule 1 [19] & 1 [22]**

The amendments also contain transitional provisions that apply this amendment to existing mortgages if an advance or further advance is made after the commencement of the amendment. See **Schedule 1 [26]**. The Bill also makes some consequential amendments. See **Schedules 1 [20] & [21]**

General

The amendments exempt a joint government enterprise that has the function of allocating funds for joint water savings projects from all duty chargeable under the Act. See **Schedule 1 [24]**

The amendments enable regulations of a savings or transitional nature to be made as a consequence of the amendments made to the Act. See **Schedule 1 [25]**

Statute law revision

The amendments clarify the nature of a court order by which dutiable property may be vested and be liable to transfer duty. See **Schedule 1 [1]**

The amendments clarify the mechanism by which various forms required for the purposes of the Act are approved by the Chief Commissioner. See **Schedules 1 [5] & [27]**

The Bill makes amendments to create consistency of language in respect of cancelled agreements. See **Schedules 1 [8] & [9]**

The amendments also replace references to provisions of Act that have been repealed. See **Schedules 1 [11] & [23]**

Schedule 2 Amendment of Fines Act 1996

Transfer of functions of Infringement Processing Bureau to Office of State Revenue

The State Debt Recovery Office and the Infringement Processing Bureau within the Police Department have now become part of the Office of State Revenue. The amendments enable certain persons employed in the Office of State Revenue to issue and deal with penalty notices. See **Schedule 2 [1]**

The amendments also expand the functions expressed to be exercised by the State Debt Recovery Office to enable that Office to enter into arrangements for the collection and recovery of money payable under penalty notices and the issuing of courtesy letters. See **Schedule 2 [2]**

The amendments enable regulations of a savings or transitional nature to be made as a consequence of the amendments made to the Act. See **Schedule 2 [3]**

The Amendments also insert transitional provisions into the Act. These provisions:

- add the Treasurer and the Director of the State Debt Recovery Office as parties to service agreements in force as at 1 October 2003 that were entered into by the Infringement Processing Bureau for the recovery of penalties payable under penalty notices; and
- translate references in instruments relating to the Infringement Processing Bureau into references to the Office of State Revenue or the State Debt Recovery Office, as the case requires.

See **Schedule 2 [4]**

Schedule 3 Amendment of First Home Owner Grant Act 2000

Acquisition of fractional interests

The amendments make it clear that an applicant cannot obtain a grant under the Act on the transfer of a fractional interest in a home. See **Schedule 3 [4]**

Multiple occupancy contracts and multiple occupancy land

The amendments insert sections 6A and 6B into the Act.

Section 6A applies to the purchase or construction of dual occupancy residences for two separate homebuyers under one contract. A person will be eligible under the Act if each home comprises an exclusive occupancy, that is, each homebuyer will occupy the home as a place of residence to the exclusion of those who purchase other homes, or for whom other homes are built, under the contract.

Section 6B gives eligibility to the purchase or building of a home on a parcel of land on which there is another home, or other homes, if each home purchased or built is an exclusive occupancy. See **Schedule 3 [3]**

The amendments make a number of consequential amendments See **Schedules 3 [1] & [8]**

The amendments also provide that the Department of Housing is not an interested person who is required to join in the making of an application under the Act. See **Schedule 3 [8]**

Purchasers under terms contracts

The amendments allow a purchaser under a terms contract to retain a grant under the Act even though the transaction is not completed by the registration of a transfer. See **Schedules 3 [2] & [7]**

The amendments also define **terms contract**. See **Schedule 3 [1]**

The residency test

The amendments introduce a period-based residency requirement that the home is to be occupied as the principal place of residence for 6 consecutive months to commence at any time within 12 months after completion of the eligible transaction in order to receive the grant. See **Schedules 3 [5], [6] & [9]**

Savings and transitional provisions

The Amendments make savings and transitional provisions as a consequence of the amendments made by Schedule 3. See **Schedules 3 [10] & [11]**

Schedule 4 Amendment of Land Tax Management Act 1956

Trust created by will

The amendments restore the exemption provided to a deceased estate for the first tax year following the death of the owner of the land or, where the land has not been distributed pursuant to the will by the expiration of that time, for such longer period as may be approved by the Chief Commissioner. See **Schedule 4 [2]**

Principal place of residence

The amendments repeal and replace the exemption granted under the Act for a person's principal place of residence. The provisions are now set out in Schedule 1A. See **Schedules 4 [4] & [11]**

The amendments also make a number of consequential amendments. See **Schedule 4 [1], [3], [6], [7], [9] & [10]**

Exemption from land tax

The amendments grant an exemption from land tax in respect of the land of a joint government enterprise that has the function of allocating funds for water savings projects. See **Schedule 4 [5]**

Land used for two or more exempt purposes

The amendments insert, by way of statute law revision, a new section 10A. The substituted section makes it clear that if land is used for more than one purpose and each of those purposes is an exempt purpose, the land is exempt from taxation. See **Schedule 4 [8]**

Savings and transitional provisions

The amendments make savings and transitional provisions as a consequence of the amendments made by the Schedule 4. **Schedule 4 [12] & [13]**

Schedule 5 Amendment of Pay-roll Tax Act 1971

Wages liable to pay-roll tax

The amendments close a loophole that allows the avoidance of tax on wages paid outside Australia to an employee

who provides services in two or more States. See **Schedule 5 [1]**

Exemption from pay-roll tax

The amendments grant an exemption from land tax in respect of the land of a joint government enterprise that has the function of allocating funds for water savings projects. See **Schedule 5 [2]**

Recovery of pay-roll tax from directors and former directors of corporations

The amendments repeal part 5A of the Act as a consequence of the inclusion of corresponding provisions on behalf of the taxation Acts in the Taxation Administration Act 1996. See **Schedule 5 [3]**

Savings and transitional provisions

The amendments enable regulations of a savings and transitional nature to be made as a consequence of the amendments made by the Schedule 5. See **Schedule 5 [4]**

Schedule 6 Amendment of Taxation Administration Act 1996

Acceptance of money or return not necessarily an assessment

The Bill makes a minor amendment to make it clear that the acceptance of money or a return does not of itself constitute an assessment. See **Schedule 6 [1]**

Recovery of tax from directors and former directors of corporations

The amendments insert a new Division 2 into Part 7 of the Act. The new Division applies the provisions relating to so-called "Phoenix companies" that are contained, in the Pay-roll Tax Act 1971 and sections 222AOA-222AOE of the Commonwealth Income Tax Assessment Act 1936, to all the revenue laws to which the Taxation Administration Act 1996 applies. Phoenix companies are companies that are wound up by the directors to avoid paying debts, which may include State taxes. The same directors may immediately start up another company to carry on the same sort of business. See **Schedule 6 [3]**

The amendments also makes a consequential amendment. See **Schedule 6 [2]**

Disclosure of information

The amendments reinstate the Commissioner of Police and the Commissioner of Vocational Training as authorised recipients of information obtained under or in the administration of a taxation law. See **Schedule 6 [5]**

The amendments also extend the prohibition on secondary disclosures of information to ensure that information obtained under or in the administration of a taxation law cannot be further disclosed without the consent of the Chief Commissioner. See **Schedule 6 [6]**

Review of decisions by the Administrative Decisions Tribunal

The amendments create consistency with the Administrative Decisions Tribunal Act 1997 by providing that the decisions of the Chief Commissioner that are subject to review under that Act are decisions within the meaning of that Act. See **Schedule 6 [7]**

Minor amendments

The amendments delete an obsolete provision. See **Schedule 6 [4]**

The amendments also extend the power of the Chief Commissioner to use amounts that would otherwise be required to be paid to a person to offset a tax liability of the person. See **Schedule 6 [8] & [9]**

Savings and transitional provisions

The amendments make savings and transitional provisions as a consequence of the amendments made by Schedule 6. See **Schedule 6 [10] & [11]**

Schedule 7 Amendment of Unclaimed Money Act 1995

Increase in minimum amount required to be returned as unclaimed money

The amendments increase, from \$20 to \$100, the minimum amount required to be returned to the Office of State Revenue by a business in its unclaimed money return. See **Schedules 7 [1]-[3]**

Savings and transitional provisions

The amendments make savings and transitional provisions as a consequence of the amendments made by Schedule 7. See **Schedules 7 [4] & [5]**

Mr BRYCE GAUDRY: I commend the bill to the House.

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