



# NSW Legislative Assembly Hansard

## State Revenue Legislation Amendment (Tax Concessions) Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 17 October 2006.

### Second Reading

**Mr PAUL McLEAY** (Heathcote—Parliamentary Secretary) [12.01 a.m.], on behalf of Mr John Watkins: I move:

That this bill be now read a second time.

The State Revenue Legislation Amendment (Tax Concessions) Bill 2006 implements land tax changes announced in the 2006-2007 budget. The bill also clarifies and extends a number of concessions from State taxes. The bill amends the Duties Act 1997, the Gaming Machine Tax Act 2001, the Land Tax Management Act 1956, the Valuation of Land Act 1916, and the Taxation Administration Act 1996. I will deal first with amendments relating to land tax.

In September 2005 the High Court ruled that in most unit trusts a unit holder is not the owner of the land held by the trust. This decision means that the unit trust, and not the unit holder, is liable for land tax at the flat rate applying to special trusts with no entitlement to the threshold. Measures were announced in the 2006-2007 budget to provide relief for certain family unit trusts and for unit trusts that restructure into fixed trusts. The amendments in this bill implement these measures with effect from the 2006 land tax year. The amendments set out the eligibility criteria for family unit trusts to continue to receive the benefit of the tax-free threshold. The amendments also allow unit trusts that elect to restructure into fixed trusts to do so without incurring State taxes on the restructuring transactions.

Three-year averaging of land values was announced in the budget to reduce the large variations in tax assessments that can occur from year to year. The bill makes some minor amendments to the averaging legislation. One amendment simplifies the system of averaging the value of land subject to a protected tenancy and land subject to a heritage restriction under an environmental planning instrument. The amendments will provide for the last three concessional land values to be averaged rather than having to average the land values before the reduction applies. This is consistent with the way land values are averaged where the land is subject to a heritage order under the Heritage Act.

The bill also includes a statute law amendment relating to the land value of Crown land where the lessee is liable for land tax. The amendment will provide for the land value of a parcel of Crown land that is part of a larger parcel to be separately recorded in the register of land values. The bill makes minor amendments to the valuation objection provisions of the Valuation of Land Act. Amendments in the 2006 budget measures legislation gave taxpayers a right to object to all three land values that make up the average value of a parcel of land. In effect, this extended the time for taxpayers to lodge objections against prior year values. Taxpayers will be able to object to prior year valuations, provided those valuations have not already been the subject of an objection. The amendments do, however, provide discretion for the Valuer-General to consider a second objection against a prior year valuation if the taxpayer can demonstrate special circumstances.

A consequential amendment is made to the Taxation Administration Act. When an objection is made to a prior year land value used to determine the average value, that objection does not affect the validity of the land tax assessment for the prior year. The bill makes a number of amendments to the Duties Act primarily for the purpose of providing or extending concessions and exemptions from duty. A recent decision of the Administrative Decisions Tribunal highlighted some anomalies in the application of a provision that aggregates transactions for duties purposes. The provision effectively imposes a higher rate of duty on multiple transactions as part of one arrangement subject to a discretion for the Chief Commissioner not to aggregate.

The Tribunal decision has added uncertainty as to when the discretion should apply. A review by the Office of State Revenue found that although the aggregation provision can apply to some transactions that are outside its intended scope, the discretion is rarely applied. In particular, aggregation can apply to arrangements where separate vendors play no part in that arrangement, such as where a developer purchases blocks of adjoining land from unrelated vendors. The bill, therefore, removes the redundant discretion and adds another limitation to the aggregation provision so that it only applies if the transferor is the same person or the transferors are associated persons.

The bill also makes a specific exception for purchases of multiple lots by home builders. These amendments will improve taxpayer certainty, reduce compliance and administration costs, and reduce the duty payable in some cases by builders and developers. Call option assignment duty prevents the avoidance of transfer duty by the use of options. Since this duty was introduced in June 2005 the Office of State Revenue has held discussions with the Property Council of Australia, the Housing Industry Association, and the Urban Development Institute of

Australia. Although those bodies acknowledge the need to address duty avoidance practices, they have identified what they consider to be unintended consequences of the provisions.

The bill clarifies the definition of a call option to ensure that it does not include an agreement for sale and introduces two new exemptions. The first is an exemption for assignment of options by home builders. Developers and builders use put and call options as a means of allowing the builder to construct a home for sale on land owned by a developer. The builder enters into a building contract with a home buyer and subsequently assigns the option over the land to the home buyer. The bill exempts this assignment from duty. The second is a specific exemption for intra-group transfers of call options where the assignee and assignor are corporations that are members of a group. Although these assignments may be eligible for an exemption as a corporate reconstruction, that exemption requires an application to the Chief Commissioner for approval of each transaction. The new exemption will, therefore, remove an unnecessary administrative and compliance burden.

The bill extends a duty concession that applies to a home equity release scheme which allows the home owner to access part of the value of their home without affecting their rights as owner. Many older people have valuable homes but little cash on which to live. A home equity release scheme provides home owners with cash in exchange for the right to a specified percentage of the future sale proceeds when the home is eventually sold. The minimum age for this scheme was originally set at 65 years. Following further representations the age has been reduced to 60 years.

The bill also clarifies a provision that potentially imposes an unintended nominal duty on certain documents that establish or govern a managed investment scheme. The bill removes that liability. A duties exemption applies to transfers of land used for primary production between family members. The bill adopts for duties purposes the same definition of land used for primary production used in the land tax legislation. This will ensure consistent treatment of primary production land for State tax purposes. The exemption also defines family members by reference to various relationships by blood or marriage. An anomaly has been identified whereby the former spouse of a deceased family member would not be eligible for the exemption despite being considered part of the family conducting the farming business.

The bill confirms that the former spouse of a deceased family member is part of the family for the purposes of the exemption. When assessing a liability to land rich duty there has been a longstanding practice that the liability to duty arising from an agreement to purchase shares occurs on completion of the agreement. A decision of the Supreme Court stated that the liability arises on registration of the transfer. This decision would have the effect of deferring liability to duty or even allowing avoidance of that liability in some circumstances. The bill restores the previous practice. Finally, the bill contains a statute law amendment to the Gaming Machine Tax Act to correct a minor drafting error.

The bill is more good news for the New South Wales economy from the lemma Government. This is the Government that in just over 12 months has abolished vendor duty, lifted the land tax threshold, cut workers compensation premiums for business by 15 per cent, and recently by 25 per cent, cut payroll tax for companies locating or expanding in areas of higher unemployment, and solved the pokies tax issue with the clubs. The bill demonstrates the lemma Government's determination to continue building a strong New South Wales economy, an economy with unemployment at its lowest levels in 25 years, an economy of a State that continues to be awarded the highest credit rating of triple A.

Compare the Government's sound financial management to the Opposition and its scary Peter meter—now up to more than \$25 billion of unfunded commitments. The Opposition is promising everything to everyone. It will either break its promises or send New South Wales broke. Given its recent public pronouncements, it is a genuine risk to our triple A credit rating. After all, let us not forget it has form. The last time Coalition members were in Government, New South Wales was placed on credit watch. The risk that it will bankrupt New South Wales is real. While the Coalition is busy announcing its latest crazy spending proposals, the lemma Government is getting on with the job of further strengthening the New South Wales economy. I commend the bill to the House.