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Second Reading

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [5.14 p.m.]: I move:

That this bill be now read a second time.

The State Revenue Legislation Amendment Bill 2014 is simply one of a series of several pieces of legislation to clarify administrative and implementation issues in tax legislation. The bill is not designed to effect major change in order to raise revenue. I say that at the outset because a number of members opposite became a little excited regarding some aspects that will be addressed in due course. In that regard, it is appropriate that I seek leave to incorporate the remainder of my second reading speech into *Hansard*.

Leave granted

The State Revenue Legislation Amendment Bill 2014 is part of the Government's ongoing program of maintaining legislation governing taxes administered by the Office of State Revenue.

The bill clarifies the liability to and exemption from duties and land tax, and includes measures to protect the State's tax revenue.

The bill amends three taxation Acts, and I will deal first with the amendments to the Land Tax Management Act 1956, ("the principal Act").

Under the principal Act, land is exempt if it is owned by or in trust for a charitable institution or used solely as a site for a charitable institution.

A recent Administrative Decisions Tribunal decision has highlighted an inconsistency in the legislation compared to the Duties Act and the Payroll Tax Act. At present, a charitable trust which does not constitute an "institution" is not entitled to the land tax exemption even when all of its assets and income are applied only for charitable purposes.

The bill extends these exemptions to corporate bodies, societies and other charitable bodies which are carried on solely for charitable purposes and not for the pecuniary profit of the members.

The bill contains amendments to Schedule 1A of the principal Act which exempts an owner's principal place of residence [PPR].

The exemption applies if the owner, or at least one of the joint owners, uses and occupies the land as the person's principal residence.

An owner may be absent from his or her exempt principal place of residence for a period of up to six years but still retain the principal place of residence exemption provided the residence is not rented out for more than six months in the preceding calendar year, and provided also that the owner is not entitled to the principal place of residence exemption for another residence.

However, if the absent owner does not occupy any other residence as his or her principal place of residence on the taxing date, the unoccupied residence is not exempt. These circumstances may arise when an absent owner is travelling or is living in a caravan, boat or hotel.

The bill removes this anomaly by omitting the requirement that an absent owner must live in another principal place of residence during absences from their normal residence.

Under the principal Act, a landowner may claim the principal place of residence exemption for two residences for one tax year if a new residence is purchased during the six months prior to the commencement of the tax year. This exemption is intended to cater for people who buy a new residence before they sell their existing residence, and

therefore own two properties on the taxing date.

The bill removes the requirement to sell the former residence, provided the new residence is occupied before commencement of the next tax year.

Trustees who own land are liable for land tax, but their tax liability is payable out of trust funds. For land tax purposes, trusts are classified as either "fixed trusts" or "special trusts".

Unit trusts are generally taxed as special trusts. This means the trust is ineligible to claim the tax-free threshold but unit holders do not pay a secondary tax liability.

However, a unit trust can be classified as a fixed trust if its trust deed contains provisions, called "relevant criteria", which have the effect of making the unit holders liable for land tax on a share of the trust's land, as secondary taxpayers.

The bill includes changes to the relevant criteria applying to unit trusts to make it clear that a unit trust can only be classified as a fixed trust if only one class of units has been issued with identical rights to income and capital of the trust.

The changes are consistent with the current interpretation of the Act applied by the Office of State Revenue.

Under the principal Act, a person who holds a life estate in land is deemed to be the owner for land tax purposes, and any person who holds the remainder or reversionary interest is excluded from liability for land tax.

A life tenant's interest in the land continues for the life of a specified person, who is usually the life tenant. On the death of that person, the land reverts to someone else, who is usually registered on title.

There has recently been a significant increase in the creation of life estates in land owned by companies and special trusts to obtain the benefit of the tax-free threshold or to avoid land tax altogether by qualifying for the principal place of residence exemption.

The bill makes both the owner of the life estate and the owner of the reversionary or remainder interest liable for land tax. This ensures companies and special trusts cannot reduce their land tax liability by creating life interests.

However, an exception is allowed for life estates created under the express provisions of a will, which has been the traditional means by which life estates were created, and which by its nature does not lend itself to tax planning.

As a result of the amendments, where a company holds the remainder interest in land which is subject to a life estate, the land will not qualify for the principal place of residence exemption.

In addition, if a company owns land as trustee of a special trust, the special trust will not be entitled to the benefit of the tax free threshold.

However, if the land is owned by a trustee who is a natural person, and the land is the principal place of residence of a life tenant, the land will continue to be exempt.

The bill also includes statute law amendments for the purposes of the exemption for primary production land and land used for childcare services. These amendments reflect changes to the zoning of land under the Environmental Planning and Assessment Act, and the application in New South Wales of the National Law dealing with child care services.

The second taxation Act amended by the bill is the Taxation Administration Act 1996. The bill amends that Act to clarify and strengthen the Chief Commissioner's power to recover an unpaid corporate tax liability from directors and former directors.

The current legislation requires a compliance notice to be issued to a director before recovery action commences against a director. The amendments will require a notice of assessment to be issued to the director if the failure to pay the corporate tax liability is not "rectified" within the time specified in the compliance notice.

In addition, the director's joint and several liability will be extended to include not only the company's unpaid primary tax, but also any late payment interest and penalty tax accruing after the compliance notice is issued.

Finally, the bill includes amendments to the Duties Act 1997 to extend the duties exemption for transfer of relationship property upon the breakdown of a marriage or de facto relationship by updating definitions of matrimonial property and relationship property to reflect the power of the Family Court to make orders relating to that property.

The bill also includes other minor amendments to the Duties Act, including changes to definitions, and amendments in the nature of statute law revision.

The amendments contained in the State Revenue Legislation Amendment Bill 2013 were the subject of consultation with industry and professional bodies.

The amendments will provide greater certainty for taxpayers in complying with state revenue legislation, including in relation to the application of various tax exemptions.

I commend the bill to the House.