Agreement in Principle

Mr JOHN AQUILINA (Riverstone—Parliamentary Secretary) [7.13 p.m.]: I move:

That this bill be now agreed to in principle.

The State Revenue Legislation Further Amendment Bill 2009 is the latest in a series of bills to amend Acts administered by the Office of State Revenue. This is to ensure that the legislation is current and consistent with best-practice tax administration. It makes amendments in five broad areas to provide revenue protection measures and address tax avoidance practice, provide tax concessions for duties and land tax, improve administration of first home benefits under the First Home Plus and First Home Owner Grant schemes, improve administration of fines enforcement, and clarify provisions in State revenue legislation to align them with current practices and interpretations. It also makes a number of legislative changes arising from the mini-budget. It enacts the Federal Government's First Home Owner Boost Scheme, which is administered by the New South Wales Government and requires State legislation.

The bill makes substantive amendments to the Duties Act 1997, the Fines Act 1996, the First Home Owner Grant Act 2000, the Land Tax Management Act 1956, the Petroleum Products Subsidy Act 1956 and the Taxation Administration Act 1996. The bill also makes consequential and statute law amendments to various other Acts. I will deal with the amendments to each principal Act in turn. The bill implements the decision announced in the mini-budget on 11 November 2008 to replace the land rich provisions of the Duties Act with a landholder model. From 1 July 2009, under the new landholder model, transfer duty will be payable when a 50 per cent or more interest is acquired in an unlisted company or unit trust that owns land in New South Wales with a value of $2 million or more.

The bill imposes duty on the acquisition of 90 per cent or more of a listed entity or widely held trust with 300 or more investors. A concessional duty of 10 per cent of the transfer duty otherwise payable is provided, rather than the full duty rate charged by Western Australia and the Northern Territory. This provision will not commence until 1 October 2009 to allow those affected extra time to get ready for the new provision. To provide consistency with the tax treatment of direct transactions, landholder duty will apply to the acquisition of land and goods. In response to representations by professional and industry groups, the bill includes changes to raise certain thresholds and harmonise more closely with other jurisdictions. In addition, the bill includes several other integrity and revenue protection measures. The bill introduces a general anti-avoidance provision for duties.

Over the years, adopting provisions that specifically address identified avoidance practices has successfully protected the duties revenue base. Unfortunately, new schemes increasingly being used are to avoid significant duties liabilities on one-off transactions. To combat these practices, most Australian States and Territories have introduced general anti-avoidance provisions for duties in recent years. The challenge for these provisions is to ensure that a taxpayer who is confronted with alternative methods of achieving the same end is not guilty of tax avoidance merely by choosing the option with the lesser tax liability.

The bill adopts a general anti-avoidance provision similar to the provisions in other States. This is built around the concept of a person entering into a scheme for the "sole or dominant purpose" of tax avoidance in circumstances where the scheme is "artificial, blatant or contrived". The experience to date indicates that provisions of this nature operate as a deterrent to avoidance schemes, such that the provisions rarely need to be invoked or litigated. Any assessment pursuant to the provision would be subject to the same objection and review process that applies to other assessments by the Chief Commissioner of State Revenue. The provisions will apply only to duties liabilities arising on or after 1 July 2009.

The bill implements two other revenue protection measures for duties. The first is to clarify the basis upon which duty is paid on transfers of the goodwill of a business. A liability to transfer duty on goodwill requires a relevant connection with New South Wales. In cases where the business also operates outside New South Wales, the value of the goodwill is apportioned. A recent decision of the Supreme Court identified some deficiencies in the current provisions. The bill clarifies those provisions by adopting provisions similar to those currently operating in Queensland and Western Australia. Once a relevant connection to New South Wales has been established, the apportionment provisions will continue to ensure that duty is payable only on the New South Wales proportion.

The second measure both protects mortgage duty revenue and ensures an equitable result for mortgages relating to property both in and outside New South Wales. Mortgage duty has been abolished on owner-occupied housing and investment housing finance taken out by natural persons. The remaining mortgage duty will be abolished on 1 July 2012. In the interim, anomalies in the current New South Wales law would create significant inequities and avoidance opportunities. The bill removes these anomalies. The bill provides that duty is payable by reference to the New South Wales proportion of the total property used as security at the time of each duty liability point. To eliminate the possibility of double duty, an optional duty credit is provided in some instances. A liability will arise on the making of an initial mortgage, the addition of further securities, and on the making of

advances of money. These changes will ensure that mortgage duty is payable on no more or less than the New South Wales proportion of the security for advances at each liability point.

The bill makes two changes to ensure that the First Home Plus scheme is received only by genuine first home buyers. First Home Plus provides a duty exemption or concession on properties valued at up to $600,000. The bill clarifies the eligibility criteria relating to whether the applicant and his or her spouse have previously owned residential property. The bill also introduces a measure to assist in recovery of duty on ineligible transactions. Approximately $10 million in duty and penalties is reassessed on First Home Plus transactions each year and approximately $8 million in grants and penalties on the First Home Owner Grant Scheme is required to be repaid each year. In cases where a person who has received a concession or exemption is subsequently found to be ineligible, such as where the applicant fails to satisfy the residence requirement, the bill provides that the unpaid duty is a charge on the land. This will enable a more consistent process for recovery of duty and grant moneys.

The bill provides minor extensions of three duties concessions. The first will correct an anomaly in the concession for certain conversions of title to land. The second will extend the concession on a transfer of dutiable property between custodians and sub-custodians under managed investment schemes. The third will ensure the exemption from duty for transfers of property following the breakdown of a de facto relationship continues to apply following the referral of State powers to the Commonwealth. The emergency service levy to fund the State Emergency Service commences on 1 July 2009. Consistent with an existing provision in the Duties Act that specifies that the fire service levy is included in the amount of premium for insurance duty purposes, the bill provides that the emergency service levy is also part of the premium. A complementary amendment is made to the Insurance Protection Tax Act 2001. The bill also specifies that insurance duty on trauma and disability policies is calculated at 5 per cent of the total premium, to remove uncertainty as to the applicable rate. The final change to the Duties Act made by this legislation is an update to the list of Crown bodies that are subject to duty. That list is included in the principal Act, and the Duties (Crown Immunity—Application of Act) Order 1998 is repealed.

The First Home Owner Grant Scheme identifies six criteria to determine whether an applicant is eligible for the grant, and an applicant's status in relation to some of these criteria can change during the application period. For example, an applicant may not be an Australian permanent resident when buying a home but may obtain that status before applying for the grant. Since the scheme's commencement in 2000, the practice of the Office of State Revenue had been to determine eligibility at the date of application, being the date on which the applicant declared the truth of the facts contained in the application. However, since a decision of the Administrative Decisions Tribunal in 2008, applications are now determined at the commencement date for the transaction, such as the date contracts are exchanged. The Act as currently worded remains ambiguous, and other State and Territory revenue offices have variously interpreted the same or similar provisions in different ways. The bill amends the Act to confirm that an applicant's compliance with the eligibility criteria for the grant is to be determined at the commencement date for the eligible transaction.

The bill implements the Commonwealth Government's announcement of an extension to the First Home Owner Boost, which provides additional assistance to first home buyers until 31 December 2009. This is in addition to the $7,000 First Home Owner Grant provided by the New South Wales Government and to the $3,000 New South Wales New Home Buyers Supplement, which was extended in the budget until 30 June 2010. The bill also implements the mini-budget announcement to introduce a cap on grant payments, limiting eligibility to the grant to homes valued at no more than $750,000. This provision will come into force on 1 January 2010 once the Commonwealth First Home Owner Boost scheme ends.

The Chief Commissioner of State Revenue currently has the power to correct a decision to pay the grant within five years of that decision. Experience has now shown that this is insufficient time when dealing with cases of fraud and identity theft, which may not come to light until many years later. The bill allows a decision on the grant to be varied or reversed more than five years after it was made if it was based on false or misleading information provided by or on behalf of the applicant. This is consistent with provisions allowing reassessment of duty under the First Home Plus scheme. The bill also clarifies the circumstances in which information obtained in administering the grant may be disclosed. Disclosure to the Commonwealth will be permitted for the purposes of the First Home Saver Accounts scheme, and disclosure of information for the purpose of legal proceedings will be limited to proceedings arising out of the administration of the First Home Owner Grant Act or a taxation law.

I turn now to the Land Tax Management Act. Where land is jointly owned and one of the joint owners is exempt from land tax, the exemption applies only to the interest held by that joint owner. Other joint owners remain liable for their interest in the land. An example is where one of the joint owners is a Commonwealth Government body, which is exempt by the operation of a Commonwealth law. However, there is uncertainty about how the land tax liability of the joint owner who is not exempt should be calculated under the legislation, particularly where the other joint owner is entitled to constitutional immunity. It has been past practice to assess the non-exempt joint owners on the value of the property reduced by the proportionate interest of the exempt joint owner. The bill amends the provisions relating to the assessment of joint owners to confirm the current practice. The bill also clarifies that where a joint owner is immune from State taxation by the operation of Commonwealth law, the immunity does not extend to the interests of any other joint owners.

Land tax is a first charge on land, and the charge remains with the land until the tax is paid, even if the land is sold. These provisions also apply to company title land where the home unit company owns the land and building, but the shareholders are deemed owners of each individual unit for land tax purposes. As a result any land tax owed by the owner of one unit would be a charge on the entire property. It is not reasonable to place a charge on an entire parcel of land owned by a company due to a single defaulting deemed owner. It is therefore proposed to amend the Act to exclude land owned by a home unit company from the land tax provisions imposing a charge for unpaid tax. Since 1987, lessees of Crown land have been deemed to be the owners of the land for land tax purposes.

The whole of Lord Howe Island is vested in the Crown, so lessees of land on the island are potentially liable for land tax. Most of the land leased by the Lord Howe Island Board would be eligible for exemption as the principal place of residence of the various lessees, or as land used for primary production. However, a small number of parcels of land could be liable for land tax, including leases used for commercial purposes. Land on the island is not valued on a regular basis, nor are values recorded on the Register of Land Values maintained by the Valuer-General. Therefore, lessees would be unaware of any potential land tax liability, and no lessees have ever been assessed for land tax by the Office of State Revenue. Furthermore, the commercial use of land on Lord Howe Island is limited by the island's World Heritage status and is strictly regulated by the Lord Howe Island Board.

The limited valuation information that is available suggests that land values on the island are generally below the land tax threshold. Any revenue generated from land tax would not be sufficient to justify the additional costs of maintaining valuations on the Register of Land Values. The bill therefore provides that the whole of Lord Howe Island is excluded from the application of the Crown lease provisions of the Land Tax Management Act. The exclusion is backdated to the introduction of the liability on lessees in 1987.

> **Mr Greg Smith:** Scintillating stuff, John.
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> **Mr JOHN AQUILINA:** I just wish the Lord Howe Island Board were here to hear it. They have left the Chamber. The land tax exemption for a person's principal place of residence continues to apply for one year following the death of an owner, to allow time for the executor or administrator to administer the estate. However, the concession applies only to residential land that does not include a strata lot or a residence located in a non-residential building, such as a flat above a shop. The bill clarifies that any land that was entitled to an exemption or concession because it was used and occupied by the deceased owner as a principal place of residence is entitled to continuation of the exemption or concession for one year after the death of the owner.

The mini-budget foreshadowed that the petrol subsidy in northern New South Wales would be abolished if Queensland went ahead with its proposal to restrict its subsidy scheme to Queensland residents only. The Queensland Premier has now announced that Queensland will abolish its petrol subsidy from 1 July 2009, and legislation was introduced into the Queensland Parliament on 16 June. The bill provides for the abolition of the New South Wales petrol subsidy on 1 July 2009, in line with the announced Queensland abolition. In order to prevent recipients from increasing their last subsidy payment by bringing forward sales of product, the subsidy payable for June sales will be capped. This is achieved by limiting claims to either a 10 per cent increase on the average subsidy payable for sales in the previous 11 months of 2008-09, or a total claim of $10,000, whichever is greater.

I turn now to changes to the Taxation Administration Act. Taxpayers who fail to pay the correct amount of tax are liable to pay penalty tax and interest on the amount of tax outstanding at a rate that includes two components—a market rate and a premium rate. Currently, the market rate is adjusted on 1 July each year, based on a rate published by the Reserve Bank during the preceding May. To ensure that the rate more closely reflects market interest rates, the bill provides for automatic quarterly adjustment of the market rate component from 1 July 2009. The bill also clarifies the circumstances in which the penalty rate can be reduced for a voluntary disclosure by the taxpayer.

The bill implements improvements to the administration of fines and penalty notices by the State Debt Recovery Office. A penalty notice enforcement order is the first step of enforcement action by the State Debt Recovery Office following the failure of a person to pay or otherwise deal with a penalty notice. An enforcement order may be annulled if the person was unaware of the penalty notice or was unable to take any action in relation to the penalty notice. In these cases the person has the right to pay the penalty amount without incurring additional enforcement costs, or to dispute the alleged offence and penalty in court. Evidence has emerged that the annulment process is being abused to delay court proceedings or to delay the imposition of driver licence demerit points.

The amendments in the bill will require applications for annulment to be made within a reasonable period after the person became aware of the penalty notice or became able to take action, and will allow annulment in other circumstances only if the person had no prior opportunity to obtain a review of the liability. The bill also limits the circumstances in which payment of the penalty notice amount without enforcement costs is an option. These amendments retain the current wide grounds for annulment but prevent delays and other abuses of the process being used to avoid liability for the fine or demerit points. Currently, any amounts paid under a penalty notice enforcement order must be refunded when the order is withdrawn or annulled, even if amounts remain unpaid

under one or more other orders made in respect of the same person.

The bill authorises the State Debt Recovery Office to allocate any overpayments towards unpaid amounts under other enforcement orders of the same person, and requires the State Debt Recovery Office to notify the person of the allocation of the funds. The Fines Act specifies that fines and costs, when recovered, are payable into the Consolidated Fund unless another Act authorises payment to a specified body or account. This may conflict with another provision authorising the State Debt Recovery Office to deal with amounts collected in accordance with commercial arrangements with various government and statutory bodies. The bill confirms the authority of the State Debt Recovery Office to pay fines revenue to the body on whose behalf the fines were collected under those commercial arrangements. To simplify administration of the arrangements, it is further provided that the State Debt Recovery Office can retain the agreed fee rather than requiring that amount to be invoiced and paid back to the State Debt Recovery Office.

Finally, the bill makes a number of minor statute law amendments to the principal Acts and to the Betting Tax Act 2001, the Health Insurance Levies Act 1982, the Payroll Tax Act 2007 and the Unclaimed Money Act 1995. Most of the amendments contained in this bill have been the subject of consultation with professional and industry bodies, including the Institute of Chartered Accountants, CPA Australia, the Investment and Financial Services Association, the Law Society of New South Wales, the Property Council of Australia and the Taxation Institute of Australia. I thank those organisations for their valuable contributions to the drafting of this legislation. The amendments introduced by this bill will improve the legislation and administration of a wide range of taxes, benefits and fines administered by the Office of State Revenue, as well as other measures previously announced. I commend the bill to the House.