

INQUIRY INTO PROPERTY TAX (FIRST HOME BUYER CHOICE) BILL 2022

Name: Mr Matthew Cridland

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By email only:

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The Hon Tara Moriarty MLC
Committee Chair
Portfolio Committee No.1 - Premier and Finance
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Committee Chair

Inquiry into the Property Tax (First Home Buyers Choice) Bill 2022

1. Introduction and relevant experience

- 1.1 I make this submission as an individual and on my own behalf. The comments and opinions I have set out below may not reflect those of K&L Gates.

Experience

- 1.2 I am a Partner in the tax team at K&L Gates, an international law firm. My office is located in Sydney.
- 1.3 Since January 2000 I have advised exclusively on "indirect taxes", including GST and Australian state taxes.

Education qualifications

- 1.4 I have the following tertiary qualifications:
- (a) Bachelor of Commerce and Bachelor of Laws. University of Tasmania, 1999.
 - (b) Graduate Diploma of Legal Practice. College of Law, Sydney, 2001.
 - (c) Master of Laws. University of Sydney, 2003.

Professional qualifications

- 1.5 I have the following professional qualifications:
- (a) Admitted as a solicitor, Supreme Court of New South Wales.
 - (b) Admitted as a solicitor, High Court of Australia.
 - (c) Chartered Tax Adviser, The Tax Institute (Australia).

Professional rankings

1.6 I am currently ranked in the following legal and tax guides:

- (a) Chambers and Partners, Asia-Pacific 2022, Tax
- (b) Best Lawyers, Tax Law - Sydney, 2022
- (c) Doyles Guide, NSW Tax Lawyers, 2022
- (d) ITR, Indirect Tax Leaders Guide, 9th Edition (2021)

2. Submission Summary

2.1 All section references relate to proposed provisions in the *Property Tax (First Home Buyers Choice) Bill 2022* ("**Bill**").

2.2 For the reasons set out in detail below, I submit:

- (a) The formulas set out in the Schedule 2 of the Bill are complicated. It will be difficult for relevant stakeholders (including taxpayers, financiers and advisors) to estimate future Property Tax amounts with certainty at the time a home is purchased.
- (b) Due to the manner in which the Property Tax is calculated:
 - (i) the benefits are most favourably skewed towards first home buyers who purchase high rise apartments close to the \$1.5 million cap; and
 - (ii) first home buyers who purchase a freestanding home will not receive the same potential benefits.
- (c) If a first home buyer needs to move out of their home (say, for work or family reasons), and they lease their home to tenants, the Property Tax payable will increase by almost 375%. Again, purchasers of freestanding homes will be most adversely impacted. The resulting tax may be so high that it is necessary for the home owner to sell the premises.
- (d) If the purpose of the Bill is to remove the upfront duty cost for first home buyers, there is an alternative which more simply and equitably addresses the issues listed above.

3. Complexity of the formulas

3.1 In the initial period (i.e. for the financial year ending on or before 20 June 2024), applying the fixed component and determining the land value component will be relatively straight forward.

3.2 However, in future financial years, determining the fixed component and land value rates, by applying the formulas set out in Schedule 2, will be difficult. As a practical matter, taxpayers will need to rely on the Chief Commissioner to do the calculations and advise the amounts payable through an assessment.

- 3.3 This complexity may create a lack of certainty that could be an issue for all stakeholders, including:
- (a) **First home buyers** who have one opportunity to decide whether they should / should not "opt in" to Property Tax.
 - (b) **Professional advisers** (such as lawyers, conveyancers, accountants or financial planners) who may be engaged to provide advice on whether a first home buyer should "opt in".
 - (c) **Banks and other mortgage lenders** who need to gauge a home loan applicant's capacity to meet their home loan commitments having regard to expenses, including future Property Tax payments.
 - (d) **Future NSW Governments** seeking to estimate revenues, including from Property Tax.
- 3.4 It is acknowledged that under proposed section 24(2)(b)(ii) most annual Property Tax increases will be capped at 4% of the Property Tax payable in the preceding financial year.
- 3.5 However, this 4% cap will not apply in a number of circumstances. This includes where the first home buyer switches to using the premises as an investment property (or switches back from using it as an investment property to a principal place of residence). Refer proposed section 24(2)(a) and section 24(5)(d).
- 3.6 Similarly, the 4% cap will not apply if the relevant premises have been consolidated with other land or subdivided. Refer proposed section 24(2)(a) and sections 24(5)(e) and (f).
- 4. The benefits are most favourably skewed to high rise apartment purchasers**
- 4.1 The land value component of the Property Tax is calculated by reference to the "land value" of the relevant premises. Refer proposed section 24(4)(a).
- 4.2 "Land value" is defined in Schedule 6 to mean the land value as determined by the Valuer-General and recorded in the Register of Land Values. That is the "unimproved value" of the land.
- 4.3 Two residential premises - one being a freestanding home and the other a high rise apartment - may be of equal market value (i.e. they both have an equivalent purchase price on the open market). However, a freestanding home will have a much higher unimproved land value as compared to a high rise apartment.
- 4.4 This reflects that the unimproved value of the land on which a high rise apartment complex is situated needs to be apportioned and allocated across all apartments in the building based on unit entitlements. There is no such apportionment for a freestanding home.
- 4.5 To illustrate, the two premises set out in the table below are currently listed for sale on the realestate.com.au website. I have set the amount of Property Tax and Transfer Duty which may be payable by a first home buyer for each property.

- 4.6 These results have been calculated using the First Home Buyer Choice Calculator published on the NSW Government website and available online here >> [First Home Buyer Choice Calculator \(nsw.gov.au\)](https://www.firsthomebuyer.nsw.gov.au/)

| Property Address | Premises Type | Advertised Price | Property Tax (Year One) | Transfer Duty |
|---------------------------------------|---------------------|----------------------------|-------------------------|----------------------|
| 1107/500 Pacific Highway, St Leonards | High rise apartment | \$1,480,000 | \$847 | \$65,600 |
| 3 Parma Place, Carlingford | Freestanding house | \$1,350,000 to \$1,485,000 | \$3,610 | \$58,450 to \$65,875 |

- 4.7 The advertisements for these two properties are available online at the addresses below:

- (a) St Leonards apartment >> [1107/500 Pacific Highway, St Leonards, NSW 2065 - Apartment for Sale - realestate.com.au](https://www.realestate.com.au/property/apartment/1107/500/pacific-highway/st-leonards/nsw/2065)
- (b) Carlingford home >> [3 Parma Place, Carlingford, NSW 2118 - House for Sale - realestate.com.au](https://www.realestate.com.au/property/house/3/parma-place/carlingford/nsw/2118)

- 4.8 In this example, the Property Tax payable by a first home buyer who purchases the freestanding home in Carlingford may be more than 425% higher than the Property Tax payable by a first home buyer who purchases the high rise apartment in St Leonards. This is notwithstanding the market value of the two premises is similar.

- 4.9 Of course, neither first home buyer is forced to opt into Property Tax. But this does not negate the fact that the benefits of the Property Tax proposal, based on the current calculation method, are most favourably skewed to high rise apartment purchasers.

- 4.10 Most first home buyers would reasonably assume that similar tax benefits will be made available to all first home purchasers who acquire similarly priced residential premises (regardless of whether the premises are an apartment or freestanding home).

5. Impact for first home buyers who move out of the home

- 5.1 A first home buyer may need to leave their principal place of residence for a number of reasons, including work requirements or due to changes in family or personal circumstances.

- 5.2 If premises are subject to Property Tax, and cease to be classified as owner-occupied, Property Tax will be calculated (in the first year) as:

- (a) Fixed component: \$1,500
- (b) Land value rate: 1.1%

- 5.3 In both cases, this is approximately 370% higher than the fixed component and land value rate applicable to an owner-occupied property.
- 5.4 For the house located at 3 Parma Place in Carlingford, the First Home Buyer Choice Calculator confirms the Property Tax payable (in the first year) would be \$13,270. This is approximately 370% higher than the Property Tax applicable while the house is owner-occupied. This is based on that particular house having a land value of \$1,070,000.
- 5.5 If the purchaser had instead opted to pay transfer duty, the land tax payable on the house whilst used as a residential investment property would be \$4,068 (in the 2022 land tax year).
- 5.6 It is acknowledged that the Property Tax may be a tax deductible expense for the home owner in the above circumstances. But then so would the land tax.
- 5.7 Depending on the market rents that can be achieved at the time, the home owner may consider it better to sell the house then incur that level of annual Property Tax.
- 5.8 Of course, the impacts for the purchaser of the St Leonard's apartment would be much lower. The Property Tax payable while the apartment is leased would be (in the first year) \$3,138. This again highlights the disparity in the operation of the proposed tax between purchasers of free standing homes and high rise apartments.
- 5.9 Given the St Leonards apartment has a land value of \$148,872 (which is well below the tax free threshold), there would be no land tax payable if the purchaser had opted to pay transfer duty.

6. A simple alternative

- 6.1 A simple alternative would be to allow eligible first home buyers to elect to pay the stamp duty on their first home in instalments (plus interest) over, say, 15 years. Interest could be applied at a rate below that imposed by banks. This would reduce the pressure to save for a deposit and potentially reduce lenders mortgage insurance costs. If the home buyer sells within 15 years, the outstanding duty would be payable from the proceeds of sale.
- 6.2 This advantages of this approach are:
 - (a) There is no distinction between purchasers of freestanding homes and high rise apartments. The duty is calculated based on market value as is presently the case.
 - (b) There would be no need to have a different rate apply if the first home buyer moves out and uses the premises for a residential investment. They could continue to pay duty on a deferred basis. This is a one-off duty benefit. Land tax may be applicable if the land value exceeds the tax-free threshold.
 - (c) The tax amount is known with a higher degree of certainty at the time of purchase. The interest amount may not be quantifiable, but this is a smaller amount.
 - (d) There is no need for annual land valuations or complex rate indexation.

(e) The tax is not payable in perpetuity.

6.3 While the purpose of the current Inquiry is not to find a better solution, I nonetheless contrast this simpler and more equitable approach with the current Property Tax proposal.

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If you have any queries regarding this submission, please contact me to discuss.

Yours sincerely

Matthew Cridland