

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

Organisation: Australian Institute of Conveyancers

Date Received: 25 October 2022

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The Hon. Tara Moriarty, MLC
Chairperson
Portfolio Committee No. 1
Parliament House, Macquarie Street, Sydney NSW 2000

Dear Ms. Moriarty,

RE: Property Tax (First Home Buyer Choice) Bill 2022

The Board and members of the Australian Institute of Conveyancers (NSW) Division (**AICNSW**) provide this submission to the Portfolio Committee (**the Committee**) to assist in the Committee's consideration of the provisions of the Property Tax (First Home Buyer Choice) Bill 2022.

AICNSW is the peak body for NSW Licensed Conveyancers. There are approx. 1,600 licensed conveyancers in NSW. AICNSW represents approx. 900 licensed conveyancers of which over 550 operate conveyancing businesses which undertake a significant proportion of conveyancing services on behalf of NSW citizens.

We are of the opinion that this legislation should be deferred until after the NSW State Election which is due by end March 2023.

Our opinion is formed by the following:

Limited stakeholder consultation.

In early 2021 consultation was held with NSW Treasury and NSW Revenue in relation to the proposed introduction of a Property Tax. This was a broad-based reform and feedback was provided during 2021 in relation to that proposal.

The revised and stripped back Property Tax proposed specifically for the benefit of First Home Buyers was introduced with the main thrust of extending the current support on offer to First Home Buyers and we acknowledge that this is a commendable objective. However, we were not consulted in relation to the reform in its revised form and the legislation has only recently become available for consideration as part of the legislative process.

AICNSW has experienced several instances of rushed and/or poorly executed reforms that have led to increased costs to its members and in turn increased costs to the consumer in the conveyancing transaction.

1. Surcharge Purchaser Duty (SPD)

The first example cited is the implementation of the Surcharge Purchaser Duty following the NSW State Budget in 2016.

The introduction of SPD in 2016 also saw the implementation of new requirements including the lodgement of a Purchaser Declaration, which, apart from the practical revenue objective, was also an important document to capture information required by the Commonwealth Government.

The industry view at the time was that the implementation of the new SPD measure was rushed and imposed on the practitioner with no stakeholder consultation, extremely limited training by Revenue NSW to support the measure and inaccuracy and/or omissions in the various iterations/versions of the Purchaser Declaration that followed including a lack of explanatory notes which led to the inadvertent making of many false Purchaser Declarations incurring penalties that would not have been incurred had there been sufficient communication and education provided.

The commencement of compliance activity by Revenue NSW in early 2021, 5 years after the measure's introduction, has led to a significant rise in claims against the AICNSW Professional Indemnity Insurance Master scheme policy. In 2022, the Professional Indemnity Insurance Scheme incurred its worst claims record in its 20-year history specifically due to SPD claims. This has led to a 25% increase in Professional Indemnity insurance premiums at the June 2022 renewal. Presumably, this increased cost to the practitioner will be passed onto the end consumer.

We are aware that Lawcover Insurance Pty Ltd (**Lawcover**) who manage the Professional Indemnity Scheme for NSW Legal Practitioners have experienced a similar adverse claims experience.

2. Information Notice

The second example of a poor outcome is the move to 100% electronic conveyancing and the cessation of issuing Certificates of Title and Control of the Right to Deal (CORD consents). This was not due to a rushed implementation, but a failure to address industry stakeholder concerns in the design and implementation phase of the reform.

Stakeholder engagement on this reform commenced in late 2018.

AICNSW provided a submission and correspondence to the Office of the Register General dated 28 February 2019 in which we expressed our concerns regarding the elimination of the CT's/CoRD Holder Consents. A majority of industry stakeholders also supported this position. Despite this stakeholder feedback, the reform proceeded. Minister Dominello's Second Reading Speech in the Legislative Assembly for the Real Property Amendment (Certificates of Title) Bill 2021, on 17th March 2021 attempted to assuage industry concerns by stating:

*"I have already explained why the certificate of title itself has little utility in eConveyancing. However, **the information it contains can be an important tool for a***

landowner to quickly understand what interests affect their title. This information should continue to be available to landowners when certificates of title are no longer issued.

Therefore, schedule 1 to the bill introduces a requirement for the Registrar General to issue a new document called an **information notice** to customers. **This notice will contain the same information that a person would ordinarily receive had they been issued with a certificate of title.** In abolishing certificates of title, the bill will also remove references to a court making orders for the production, issue, or delivery of a certificate of title.

From the date of the Bill passing until 11th October 2021, AICNSW and many industry stakeholders attended numerous Certificates of Title Working Group meetings to assist in the implementation of this reform. Despite the Minister's commitment, and many requests by the working group members to review the proposed Information Notice (IN), when it was revealed, it was found, with widespread alarm and concern, that the IN omitted the most important item of information, the Registered Proprietor (RP).

So, despite widespread industry consultation and feedback, and a Ministerial commitment to provide support notwithstanding the inadequacy of the reform, conveyancing practitioners and the banks found themselves in a position where they had no effective means to respond a client's question of "What have I got to show for spending my hard earned \$1.5 million?".

The IN effectively left the practitioner with the inability to provide evidence to their client that they are noted as the RP of the property they have just acquired. This forces a prudent practitioner to purchase a "post settlement" Title Search from NSW LRS, to effectively demonstrate and evidence to their client that they are the RP on title.

Another increased cost that will presumably be passed onto the end consumer.

Additional work for the conveyancing practitioner.

A regular issue with such reform is that little regard is applied to the additional work that is outsourced by NSW Government departments to practitioners.

1. Refunds:

If this legislation is rushed through it will open a potential need to consider refunds.

We refer to the second reading speech:

"Property tax applications will be available for dwelling purchases that are contracted in the period between the date of assent of this legislation and 15 January 2023. This means that an eligible first home buyer who buys a property between the assent of this legislation and 15 January would still be required to pay stamp duty to complete their purchase; however, from 16 January they will be able to apply to opt into property tax and receive a refund for any stamp duty paid"

Question: Who will apply for the refund?

Answer: Not Revenue NSW but the Conveyancing Practitioner. Revenue NSW will require this to be done through their Electronic Duties Return (EDR) portal. Only EDR subscribers can undertake this process. The client will contact their conveyancer to undertake this task. Practitioners will be advised to charge a fee for this service.

2. Property Tax Status Certificate.

A conveyancer acting for a purchaser will now be required to obtain a Property Tax Status Certificate for **ALL** eligible properties under the scheme to identify whether the property is subject to property tax and whether there is any outstanding Property Tax liability.

S 49 Identification of land subject to property tax (1) The Chief Commissioner must issue a certificate (a property tax status certificate) to a person, if the person— (a) makes an application for the certificate in a form approved by the Chief Commissioner, and (b) pays the fee, if any, prescribed by the regulations.

Question: Who will apply and pay for the certificate?

Answer: All purchasers who purchase a property under the threshold.
The conveyancer will incorporate this search expense into their usual processes and include it in the transaction disbursements.

Part 7 of the Bill outlines the deferral scheme. This scheme is intended to support vulnerable homeowners who have fallen on financially difficult times and cannot meet their property tax liabilities. Under the deferral scheme, property tax could be deferred until the dwelling is eventually sold, at which time the Government would claim the unpaid taxes (plus default penalties) as part of the property settlement.

The conveyancer will be required to calculate and adjust settlement to account for any outstanding Property tax.

3. Interpreting and explaining the legislation.

The limited time in informing and educating the public as to this new legislation will lead to additional time required by the conveyancer in interpreting and explaining the legislation to clients. The broad media coverage to date has been to sell the reform but when it becomes operational the public will be contacting their conveyancer to determine their options.

Given the element of choice in this reform we anticipate that many First Home Buyers (FHB) will seek advice from the conveyancer as to the respective cost of the options available with this choice. The Property Tax Calculator linked to the Valuation General's database is a useful tool. However, it will be the conveyancer who is asked to assist calculating the various options for the FHB.

Timing & Industry Education

Another key concern is the timing of this bill.

We are eight (8) weeks from the Christmas period, traditionally the busiest period in the year for the conveyancing industry leading up to most practitioners' annual break with most conveyancer businesses expected to close from 21st December 2022 and return around 9th or 16th January 2023.

Apart from public media releases there has been no training or education of our members. The media coverage to date has been about the headline changes and the introduction of choice; Transfer Duty or an annual Property Tax.

However, there are a myriad of technical considerations that a conveyancer needs to interpret and understand. Eligibility requirements, residency requirements, land wrongly opted in, reduction in property tax for property not subject to property tax for part of the year, absence from principal place of residence, treatment of trusts to highlight a few. These, if incorrectly interpreted and applied can lead to claims from the client against the conveyancer. Without sufficient time to educate inform and support conveyancers this may lead to a similar experience as the SPD.

AICNSW's final member face-to-face training event (Revenue NSW have attended four such events in 2022 all held prior to the legislation announcement) for many of our members was held on Saturday 22nd October 2022. This leaves the resources of Revenue NSW and digital education as the only options available to be undertaken between now and mid-late December when most conveyancing businesses will close for the annual summer break.

Finally, in terms of conveyancer training we would also like to know how long it will take for Revenue NSW to issue its Guidance & Practice notes. Complicated and important legislation reforms in relation to Options and Beneficial Ownership passed in May 2022 have still not been supported by Guidance & Practice notes.

Additional questions.

During this enquiry we hope the Committee will seek further details in relation to the following:

- Recovery of unpaid amounts (including default penalties) is secured as a first charge on the property up to 75% of the dutiable value of the land. Unpaid amounts must be paid before the land is transferred. What are the practical issues around the relative priorities of secured lenders/ shared equity scheme providers.
That will for example, likely include negotiations with secured legal and equitable interest holders in the land being transferred, obtaining additional consents for settlement and consequentially more work for conveyancers and expense for vendors in the remittance of unpaid Property Tax owed to the NSW Government.
- Why is the Property Tax proposed to be levied on a financial year basis when Land Tax is levied as at the end of a calendar year.
- Will Land Tax be applicable for property that is purchased by FHB who later elects to lease the property elsewhere.

- Do persons on Military Service meet the criteria if absent from principal place of residence.

AICNSW welcome and support any initiatives to support FHBs. However, we are also keenly aware from experience of the negative implications and unintended consequences of rushed and poorly executed reforms.

We look forward to discussing this important reform with the Committee in due course.

Yours sincerely,

Chris Tyler
Chief Executive Officer

Dale Turner
Policy Adviser