




Speech By
Hon. Curtis Pitt

MEMBER FOR MULGRAVE

Record of Proceedings, 14 June 2016

DUTIES AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. CW PITT** (Mulgrave—ALP) (Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport) (3.21 pm): I present a bill for an act to amend the Duties Act 2001 and the First Home Owner Grant Act 2000 for particular purposes. I table the bill and the explanatory notes.

Tabled paper: Duties and Other Legislation Amendment Bill 2016 [\[926\]](#).

Tabled paper: Duties and Other Legislation Amendment Bill 2016, explanatory notes [\[927\]](#).

The bill introduces the revenue measures that I announced in the 2016-17 state budget to extend the transfer duty concession for interfamilial transfers of family farming property, impose an additional three per cent surcharge for foreign purchasers of residential land in Queensland and increase the Queensland First Home Owners' Grant to \$20,000 for one year. The bill achieves those objectives by amending the Duties Act 2001, the Duties Act, and the First Home Owner Grant Act 2000, the FHOG Act. In light of the time available, I seek leave to have the balance of my introductory speech incorporated into *Hansard*.

Leave granted.

The Duties Act currently provides a transfer duty concession for the transfer of land used for a family primary production business, including adjacent residential land, and personal property used to conduct the business on the land between specified family members. This concession only currently applies to the extent the transfer is by way of gift, meaning that transfer duty will be imposed on the amount of any consideration paid.

The concession will be amended to remove the requirement that the transfer, or other dutiable transaction to which the concession applies, be by way of gift. The Bill therefore extends the application of the concession so that duty will not be imposed where consideration is paid for those types of property. The amendments take effect from 1 July 2016.

The Duties Act will also be amended to impose an additional rate of duty of 3% of the dutiable value of transactions on which transfer duty, landholder duty or corporate trustee duty are imposed. The additional duty will apply to transactions occurring on or after 1 October 2016. Consistent with the administrative framework for duty, a lodgement obligation will apply for acquirers where a relevant transaction is liable to the additional duty.

To limit exposure to avoidance, the additional duty will apply for all dutiable transactions for transfer duty, which include indirect acquisitions of interests in land through partnerships and trusts, as well as the separate duty types of landholder duty and corporate trustee duty.

The additional duty is referred to in the Bill as 'additional foreign acquirer duty' or 'AFAD'. In order to facilitate imposition of AFAD, the Bill introduces new concepts into the Duties Act of 'foreign person' and 'AFAD residential land'. The additional duty applies to the extent of the foreign person's interest acquired through the transaction, and to the extent the transaction relates to AFAD residential land. Calculation provisions reflect these criteria.

High quality Government services and investment in infrastructure in an area contribute to growth in property values for investors.

Foreign buyers of residential land are not necessarily subject to some of the other major sources of state government revenue, such as GST. It is important to ensure that foreign buyers of residential land, who benefit from Government services and infrastructure, make an appropriate contribution to their delivery, as local buyers do.

A 'foreign person' is defined as a foreign individual, foreign corporation or the trustee of a foreign trust. A 'foreign individual' is an individual other than an Australian citizen or permanent resident. A 'foreign corporation' is a corporation that is incorporated outside Australia, or is a corporation that is controlled by a foreign person or persons. Control tests for foreign corporations are specified. A 'foreign trust' is a trust in which at least 50% of the interests in the trust are held by a foreign person or persons. Interests of related parties are taken into account in these contexts, as relevant to effective ownership and control.

An acquirer will be obliged to notify the Commissioner of State Revenue of such a change in status. A reassessment provision will apply to ensure that structuring arrangements cannot be made to artificially avoid the additional duty, by shifting control or ownership of a corporation or trust to foreign persons after a transaction occurs.

Generally, 'AFAD residential land' is land in Queensland that is used, or will be used, solely or primarily for residential purposes. This includes established homes and apartments, vacant land upon which a home or apartment will be built, land for development for residential use and refurbishment of a building for residential use.

It is appropriate to capture these transactions to ensure that all relevant forms of residential property are part of the duty imposition model, so as not to create unintended distortions in the way the property market for residential land operates.

Imposition of AFAD aligns with the existing transfer duty, landholder duty and corporate trustee duty frameworks in the Duties Act. Accordingly, the same treatments will apply for AFAD as for the duty to which it relates, subject to specific provisions for AFAD. This includes, for example, the time liability arises and the liable parties.

Under the Duties Act 2001, as a revenue protection mechanism, all parties to a dutiable transaction are liable for the payment of transfer duty. This is a long standing feature of the State's duty laws, well understood by the parties involved in transactions (the parties, their professional advisers and their financiers) and incorporated into conveyancing practice. The parties deal with this contractually with the standard REIQ contract providing that the purchaser is contractually liable for the payment of duty.

Existing provision is made in the Taxation Administration Act 2001 for the Commissioner of State Revenue to recover the whole or part of the amount of a tax law liability from and one or more of the persons who are liable under a tax law. However, the Commissioner's rights in that regard do not affect the right of a taxpayer who pays an amount to recover a contribution from another person jointly or severally liable for the whole or part of the amount.

In this context, it would not be practical to make the foreign acquirer the sole party liable for Additional Duty, as this would create inconsistency with the existing duty framework, uncertainty for taxpayers and administrators including the Commissioner and Registrar of Titles, and unnecessary increases in compliance costs for parties, their professional advisers and financiers. It would also compromise the existing duty protections provided by mandatory duty endorsement as a pre-condition to Titles Office registration.

Where additional duty applies, if transfer duty is not paid, statutory charge provisions are introduced to provide the Commissioner with further recourse for recovery against an acquirer's interest in land the subject of a relevant transaction. These provisions are both appropriate for revenue protection, and as a practical matter, may reduce the need for the Commissioner to seek recovery of unpaid duty from other parties to the transaction, such as the vendor (as the existing framework entitles).

Together with this, the Bill inserts a statutory right of recovery as between non-foreign and foreign liable parties to the extent of any AFAD paid by the non-foreign party, to help ensure AFAD does not directly impact non-foreign persons.

Subject to the specific rules for imposition and calculation of the additional duty itself, it will become part of the transfer duty, landholder duty or corporate trustee duty that arises from the transaction to which it relates. Consequently, the normal administrative framework for those duties will continue to apply, including the operation of existing exemptions and rights of objection and appeal. To put the matter beyond doubt, certain concessions which might otherwise be expected to have some relevance for AFAD are specifically noted not to apply for the AFAD calculation. The concessions will continue to apply for the non-AFAD related transfer duty imposed, as intended. Other concessions will simply have no practical scope of operation for AFAD.

In the lead up to commencement of the additional duty on 1 October 2016, the Office of State Revenue will publish material to assist liable parties in clearly understanding their obligations for the duty.

The bill also amends the First Home Owner Grant Act 2000 (FHOG Act) to increase the amount of the Queensland First Home Owner's Grant to \$20,000 for eligible transactions entered into between 1 July 2016 and 30 June 2017, both dates inclusive.

Specifically, the eligible transactions are contracts to purchase new homes, contracts to build new homes and, for owner-builders, the building of a new home. All other eligibility criteria will remain the same.

To prevent abuse of the grant increase and to protect the State's revenue, provisions will ensure parties are not eligible for the increased amount if they replace a contract made prior to 1 July 2016 with a contract made on or after 1 July 2016 for substantially the same, or similar home.

Mr Speaker, I commend the bill to the House.

First Reading

Hon. CW PITT (Mulgrave—ALP) (Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport) (3.23 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.