

TRANSFER OF TITLE — STAMP DUTY EXEMPTION

Grievance

MR P. ABETZ (Southern River) [9.21 am]: My grievance is to the Treasurer and I thank him for taking this grievance. As members would know, the Duties Act 2008 provides a concessional rate of duty for first home buyers. Generally, to be eligible to have a transaction assessed at the first home owner rate of duty, the value of the property being purchased must be below a certain threshold and the purchaser must be paid a first home owner grant. The Duties Act also allows the relative of a first home buyer to purchase the property in their name and then substitute the name of the first home buyer on the transfer of the land. However, under these circumstances, a first home buyer was prevented from claiming the concessional rate of duty on the transfer of land from the relative prior to September 2012. Parliament acknowledged that this was unjust and passed the Revenue Laws Amendment Bill 2011 so that duty is now chargeable at the first home owner rate on an agreement to transfer when the named purchaser is substituted by a related first home buyer. On 3 September 2012, the Revenue Laws Amendment Bill 2011 received royal assent and consequently that anomalous outcome affecting the first home owner rate of duty was rectified in relation to all first home owner transactions from that day onward.

Now to the specific situation of my constituents, Mr and Mrs Baker. In April 2009, they entered into a contract to purchase vacant land in Canning Vale. Prior to, or on the date of execution of the transfer of land, Mr and Mrs Baker substituted their daughter Storm Fewson's name as transferee. Storm Fewson entered into a contract to build on the land and successfully applied, with her husband, for a first home owner grant after the commencement of the operation of the revenue amendment laws. An application for a reassessment of the stamp duty was lodged but declined on the grounds that at the date of the purchase of the land, the law did not allow the substituted purchaser the benefit of the concessional rate.

Mrs Fewson's lawyers appealed to the Treasurer requesting an act of grace payment for their client. The Treasurer declined to make the payment on the grounds that the revenue laws amendment was never meant to be retrospective and that the operation of the law prior to September 2012 was very clear. I think that is unfair for two reasons. Firstly, the amendment to the revenue laws was clearly brought about to rectify what everyone recognised was an injustice. In his second reading speech, the Treasurer at the time used the word "anomaly" and the explanatory memorandum to the bill states that section 142 of the Duties Act is —

to correct an anomalous outcome ...

I have difficulty in comprehending that something that is unjust or anomalous can be just or normal depending on the date an event occurred. I would say that natural justice is not time bound. I would, therefore, have expected the Treasurer to make the act of grace payment requested under those circumstances.

Secondly, it appears to me that the legislation is not altogether clear. Section 142(ii) of the Stamp Duties Act states that a first home owner grant concessional transaction applies where, inter alia, the transferee, and I quote —

becomes a person to whom a first home owner grant would be, or would have been, payable in relation to the property if consideration had been given for the transfer of the property;

Most people would understand that when the original purchase of the land was made, a first home owner grant would have been granted to Mrs Fewson had she applied for it at that time. To deny her the benefit of the concessional first home buyer rate of stamp duty therefore seems to me both unjust and possibly incorrect at law. I ask the Treasurer to review the decision that was made to refuse an ex gratia payment to Mrs Fewson.

DR M.D. NAHAN (Riverton — Treasurer) [9.26 am]: I thank the member for Southern River for the grievance and I personally understand the issues as it happened to me and my daughter in Victoria. Nonetheless, let us go through the issues. The member's description of the laws is accurate; that is, in order to be eligible for the exemption for transfer duties on a first home, a person had to acquire the first home and get the first home owner grant. The trigger was the first home owner grant. The difference between the two acts is that the first home owner grant allowed a related party, in this case the parent, to purchase the land and then upon transfer of the title give it to, in this case, I believe it was the daughter. There was a lot of debate about whether that should be allowed to happen, particularly when the first home owner grant was being set up. The argument against was that the first home owner grant and exemption process were designed to assist people who were buying their own home not being gifted a home. That is by the by, but that was a legitimate debate. I believe that there were differences across the states with the first home owner grant but they are now all common and allow the gifting of land to a relative upon transfer of the title.

That is what happened in this case. Under the first home owner grant, the member's constituent applied for and got a first home owner grant. The assumption was that that would automatically transfer to stamp duty exemption upon transfer of the title, but it did not. At that time the relevant act about exemption did not allow the transfer exemption for, in this case, gifted titles. The anomaly was that the exemption was supposed to be based on two triggers—the acquisition of land and getting the first home owner grant. The member's constituent got the first home owner grant. The anomaly was that there was a difference between the first home owner grant legislation about the gifted transfer and the stamp duty. We changed that.

At the time the argument was that words were used quite loosely, including “widening the eligibility of the exemption” and “anomalous”. I have gone through the 2012 act and there were not too many other changes, therefore I am not clear if it was anomalous or widening but it was effective for what it was—better coordination of the first home owner grant and the transfer exemption. It also made clear that from 2012 people who were eligible for the first home owner grant through the gifting of a title were eligible for the transfer exemption. Unfortunately for the member's constituent, like my daughter, this happened before the change to the act. Clearly, the Commissioner of State Revenue applied the act as correctly as it was at that time and did not allow the member's constituent to get the transfer. We changed that and if she had applied now, she would have got it. That happens in acts all the time. The Commissioner of State Revenue cannot retrospectively interpret a tax so it is not up to him to now give an exemption.

The member's constituent is seeking restitution through an act of grace. Act of grace payments are for specific purposes, including compensation for damage and loss or injustice from a government process. There is no loss or damage in this case and a mistake or injustice on behalf of the government to the member's constituent does not apply. Act of grace payments apply, for example, when someone is improperly put in prison for a long time. An act of grace payment was given to the young ladies who were burnt in the Kimberley ultramarathon. Those are the types of things that receive the payment. It is when the state or its entity is perceived to have made a mistake. This time there was no mistake; they changed their mind and widened the gamut of eligibility.

Secondly, the payments are to relieve a person from financial hardship where it appears to be proper and fair to do so, because of state actions. The member's constituent has not made a claim, nor has a lawyer on their behalf, that they are under financial duress. Act of grace payments are very tightly controlled and limited. I think the former Treasurer, on the advice of the State Solicitor's Office, made the right decision. I looked at this decision again; the Office of State Revenue was right, we changed the act and now it is broader. Unfortunately, the member's constituent is a first home buyer, so once the gun is shot, they cannot get another one. The member's constituent cannot rectify it directly and in this case is simply not eligible for an act of grace payment.

The member should tell his constituent that they bought the house at the right time in a good place and they got a first home buyer grant.