

STAMP AMENDMENT BILL 1999

Second Reading

MR KIERATH (Riverton - Minister assisting the Treasurer) [4.04 pm]: I move -

That the Bill be now read a second time.

This Bill has two purposes. Firstly, it seeks to amend the Stamp Act to ensure duty is paid on chattels that are transferred in conjunction with the grant of a long term lease. Secondly, it seeks to provide an exemption from stamp duty in circumstances where property that is vested in a bankruptcy trustee on the bankruptcy of a person is conveyed from the bankruptcy trustee back to that person.

In respect of the chattels amendments, members may recall that as part of the 1998-99 budget, the Government removed the stamp duty exemption in respect of most chattels that are transferred in conjunction with land. Land was defined to include leases which had an assigned or determined value, to ensure that no disparity existed between chattels transferred with land in fee simple and where pseudo ownership was obtained by acquiring the lease.

However, it has recently come to light that an anomaly in the legislation prevents duty from being charged on chattels that are transferred in conjunction with the grant of a long-term lease. Such grants usually occur where the property cannot be transferred in fee simple, such as when the Commonwealth effectively sold Perth Airport to commercial interests by granting a long-term lease over the land in return for the payment of a substantial premium. This creates an inequitable situation in which duty is not charged on chattels that are transferred with the grant of a long-term lease, whereas duty is charged on chattels that are transferred in conjunction with the transfer or assignment of a long-term lease. Furthermore, it also provides an opportunity for persons to structure their affairs so as to minimise their stamp duty exposure when they transfer chattels in conjunction with an interest in land. The proposed amendment should alleviate these concerns. It should be noted that the proposed amendment relates only to the grant of long-term leases which include a premium component.

Chattels that are transferred in conjunction with any other lease, including the majority of commercial leases, will not generally be charged with duty. There are currently no identified transactions where the inability to charge duty on chattels sold in conjunction with the granting of a long-term lease would impact on the revenue. However, failure to redress the deficiency in the Act could result in the loss of future revenue through tax minimisation arrangements.

I will now deal with the bankruptcy measure. Upon bankruptcy, the property of the bankrupt vests in the bankruptcy trustee in accordance with the provisions of the Bankruptcy Act 1966. Generally, no stamp duty liability arises upon the vesting of the property as there is no "instrument" constituting a "conveyance", nor is there a "transaction" which may be subject to duty. However, once property vests in the trustee it does not revest in the bankrupt following the bankrupt's discharge

from bankruptcy. The trustee is still bound to collect and realise the property in those circumstances and to distribute the proceeds among the creditors, notwithstanding the discharge. In many cases the equity in the property is established and offered back to the bankrupt in order to deal with the asset in the most cost-effective way. However, a conveyance of the trustee's interest back to the bankrupt is a conveyance on sale and is subject to ad valorem stamp duty on the unencumbered value of the property. In the circumstances of a bankruptcy in which a person has minimal funds, the imposition of stamp duty may prevent the person from re-acquiring the equity held by the trustee, particularly as the duty is calculated on the unencumbered value of the property. It should be noted that the exemption will apply only where the property is conveyed back to the bankrupt person, and a conveyance to any other person, such as the person's spouse, will continue to attract full ad valorem stamp duty. As the circumstances in which the exemption will apply are highly specific, the cost of providing the exemption is expected to be minimal. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.