



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 1

# Property Tax (First Home Buyer Choice) Bill 2022



Report 59

November 2022

1



Portfolio Committee No. 1 - Premier and Finance

# **Property Tax (First Home Buyer Choice) Bill 2022**

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Property Tax (First Home Buyer Choice) Bill 2022.

"November 2022".

Chair: The Hon Tara Moriarty MLC.



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## Terms of reference

That:

- (a) the provisions of the Property Tax (First Home Buyer Choice) Bill 2022 (not yet accompanied by a Statement of Public Interest), be referred to Portfolio Committee No. 1 – Premier and Finance for inquiry and report,
- (b) on the President reporting receipt of a message from the Legislative Assembly forwarding the Property Tax (First Home Buyer Choice) Bill 2022 for concurrence, the bill be referred to the Portfolio Committee No. 1 - Premier and Finance for inquiry and report, and
- (c) the committee report by 4 November 2022.<sup>1</sup>

The terms of reference were referred to the committee by the Legislative Council on 18 October 2022.<sup>2</sup>

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<sup>1</sup> The original reporting date was 31 October 2022 (*Minutes*, NSW Legislative Council, 18 October 2022, pp 3727-3728). The reporting date was later extended to 4 November 2022 (*Minutes*, NSW Legislative Council, 19 October 2022, pp 3767-3768).

<sup>2</sup> *Minutes*, NSW Legislative Council, 18 October 2022, pp 3727-3728.

## Committee details

### Committee members

<b>Hon Tara Moriarty MLC</b>	Australian Labor Party	<i>Chair</i>
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>Hon Scott Farlow MLC</b>	Liberal Party	
<b>Hon Mark Latham MLC*</b>	Pauline Hanson's One Nation Party	
<b>Hon Taylor Martin MLC</b>	Liberal Party	
<b>Hon Daniel Mookhey MLC**</b>	Australian Labor Party	
<b>Hon Chris Rath MLC</b>	Liberal Party	
<b>Hon Penny Sharpe MLC</b>	Australian Labor Party	

\* The Hon Mark Latham MLC replaced the Hon Robert Borsak MLC as a substantive member of the committee from 19 October 2022. The Hon Mark Latham MLC was a participating member from 18 October 2022 to 19 October 2022.

\*\* The Hon Daniel Mookhey MLC was a participating member from 19 October 2022 for the duration of the inquiry.

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Ms Kate Mihaljek, Principal Council Officer

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Mr Stephen Frappell, Clerk Assistant – Committees

## Chair's foreword

On 18 October 2022, the Legislative Council referred the provisions of the Property Tax (First Home Buyer Choice) Bill 2022 to Portfolio Committee No. 1 – Premier and Finance for inquiry and report by 31 October 2022. This reporting date was subsequently extended by the House to 4 November 2022.

The object of the Property Tax (First Home Buyer Choice) Bill 2022 is to give first home buyers a choice when buying their first home as to whether they pay transfer duty on the purchase of the land or instead pay an annual property tax.

As part of the inquiry, the committee took evidence from a range of individuals and organisations, including peak legal, housing, financial and welfare bodies. The committee also received a detailed submission from NSW Treasury and took evidence from key representatives of NSW Treasury, Revenue NSW and the Office of Valuer General.

The committee was presented with some arguments in support of the bill, and some arguments raising concerns about the bill. In those circumstances, and given the limited time available to the committee, the committee refers the bill back to the House for its consideration, including those matters set out in this report.

On behalf of the committee, I would like to thank all stakeholders who participated in this important inquiry. I would also like to thank my committee colleagues for their contributions to the inquiry, as well as the secretariat and Hansard staff for their assistance.



The Hon Tara Moriarty MLC  
**Committee Chair**

## Recommendation

### Recommendation 1

22

That the Legislative Council proceed to debate the Property Tax (First Home Buyer Choice) Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during consideration of the bill in committee of the whole.

## Conduct of inquiry

The terms of reference for this inquiry were referred to the committee by the Legislative Council on Tuesday, 18 October 2022.

The House originally specified that the committee report by Monday, 31 October 2022, a very tight turnaround of 13 days.

The House subsequently extended the reporting date to Friday, 4 November 2022. Nevertheless, this was still a very tight turnaround of 17 days, limiting the capacity of the committee to undertake a full inquiry.

In the time available, the committee received fifteen submissions to the inquiry.

The committee also held a public hearing at Parliament House on Thursday 27 October 2022.

This short report was prepared in the time available to the committee after the public hearing.

Inquiry related documents are available on the committee's website, including submissions, the hearing transcript and correspondence.



## Chapter 1 Overview

This chapter provides an overview of the current arrangements for an individual or organisation purchasing property in New South Wales and the proposed changes to those arrangements entailed in the Property Tax (First Home Buyer Choice) Bill 2022. It also provides a summary of the parties giving evidence to this inquiry.

### Existing transfer duty provisions

- 1.1 Under the *Duties Act 1997*, transfer duty, once known as stamp duty, is a tax paid on the transfer on real property in New South Wales, such as a home or investment property.<sup>3</sup> Transfer duty is calculated on the purchase price or the market value of a property, whichever is higher.<sup>4</sup> Division 2 of the *Duties Act 1997* sets out the rates of duty, including the general rate and the premium duty rate for residential properties worth more than \$3 million.<sup>5</sup> The threshold amounts for standard transfer duty and premium duty are adjusted in line with movements in the Sydney Consumer Price Index annually. Transfer duty must be paid within three months of signing a contract for sale or transfer, except in certain cases when a property is purchased off-the-plan.
- 1.2 Parts 6, 7 and 8 of the *Duties Act 1997* set out concessions and exemptions from transfer duties.<sup>6</sup> Of note, Part 8 Division 1 outlines the provisions the First Home Buyers Assistance Scheme. This scheme provides eligible first home buyers with full or partial exemption on transfer duty on property (including the land) valued at less than \$800,000.
- 1.3 In addition to the First Home Buyers Assistance Scheme, first home buyers may also be eligible for \$10,000 in assistance under the first home-owner grant for new homes.<sup>7</sup>
- 1.4 The NSW Government has proposed providing an alternative to the transfer duty system for certain eligible first home buyers to allow them to pay an annual property tax rather than transfer duty. The proposed legislative framework for this new system is set out in the Property Tax (First Home Buyer Choice) Bill 2022. The provisions of the bill are examined below.

### The provisions of the Property Tax (First Home Buyer Choice) Bill 2022

- 1.5 The object of the Property Tax (First Home Buyer Choice) Bill 2022 is to give first home buyers a choice when buying their first home as to whether they pay transfer duty on the purchase of the land or instead pay an annual property tax.
- 1.6 In his second reading speech on the bill in the Legislative Assembly, the Treasurer indicated that the Government is working to have the property tax scheme operating for land transfers that settle on or after 16 January 2023. Transitional arrangements will also be put in place

<sup>3</sup> *Duties Act 1997*, s 8.

<sup>4</sup> *Duties Act 1997*, s 21.

<sup>5</sup> *Duties Act 1997*, ss 32-32A.

<sup>6</sup> *Duties Act 1997*, parts 6, 7 and 8.

<sup>7</sup> *Duties Act 1997*, Division 1A.

between the passage of the bill through the Parliament and 16 January 2023 to allow eligible first home buyers to opt into the scheme.<sup>8</sup>

1.7 The following is a summary of the key provisions of the bill.

### **Eligibility**

1.8 Part 3 of the bill deals with eligibility for the property tax scheme.

1.9 To be eligible, a transferee must be a first home buyer and an Australian citizen or permanent resident. A first home buyer is an individual who is 18 or older who has not at any time owned residential land in Australia, either solely or with another person.<sup>9</sup>

1.10 The scheme is not available to non-first home buyers.

1.11 A transfer is an eligible transfer if it is for the acquisition of residential land or vacant land to be used as residential land. The dutiable value of the land must not be more than \$1.5M (\$800,000 for vacant land). The transfer must not be for the purposes of a business or primary production.<sup>10</sup>

1.12 If the application to pay transfer duty is approved, a first home buyer who is an eligible transferee must occupy the land as the person's principal place of residence for at least 6 months. The occupation must start within 12 months of the transfer.<sup>11</sup>

### **Opting into the scheme**

1.13 Part 4 of the bill deals with opting into the scheme.

1.14 In order to opt into the property tax scheme, an eligible transferee may make an application to the Chief Commissioner of State Revenue. The Chief Commissioner must in turn approve the application if satisfied that the application is made in accordance with the proposed Act and a first home buyer who is an eligible transferee will occupy the transferred land as the person's principal place of residence for at least six months.<sup>12</sup>

1.15 If an application to subject transferred land to property tax is approved by the Chief Commissioner, on the transfer of the land, each eligible transferee becomes an included owner and the duty chargeable on the transfer is reduced by the portion of the land owned by included owners. For example, where the transferred land owned by an included owner is 100 per cent, the transfer is exempt from duty under the *Duties Act 1997*.<sup>13</sup>

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<sup>8</sup> *Hansard*, NSW Legislative Assembly, 12 October 2022, p 21 (proof) (Matt Keen).

<sup>9</sup> Property Tax (First Home Buyer Choice) Bill 2022, cls 5, 12, 13.

<sup>10</sup> Property Tax (First Home Buyer Choice) Bill 2022, cl 14.

<sup>11</sup> Property Tax (First Home Buyer Choice) Bill 2022, cl 15.

<sup>12</sup> Property Tax (First Home Buyer Choice) Bill 2022, cls 16 and 17.

<sup>13</sup> Property Tax (First Home Buyer Choice) Bill 2022, cl 18.

**1.16** In his second reading speech, the Treasurer indicated that the Government's expectation is that around two-thirds of eligible first home buyers will opt into the scheme.<sup>14</sup>

**1.17** A first home buyer's choice to opt into the scheme does not affect subsequent owners.<sup>15</sup>

### **Liability for paying property tax**

**1.18** Part 5 of the bill deals with liability to pay property tax.

**1.19** Each individual owner of land subject to property tax is jointly and severally liable to pay property tax on the land at the start of each financial year. The amount of property tax depends on whether the land is owner-occupied or not.<sup>16</sup>

**1.20** The liability for a financial year arises at the start of the financial year. If land becomes subject to property tax during a financial year, the liability is only for the part of the financial year commencing when the land becomes subject to property tax. Similarly, if land ceases to be subject to property tax during a financial year, the liability is only for the part of the financial year until the land ceases to be subject to property tax.<sup>17</sup>

**1.21** The amount of property tax is calculated in accordance with the provisions of Schedule 2 of the bill. In summary:

- for owner-occupiers, the initial property tax rates will be \$400 plus 0.3 per cent of the land's value as determined by the Valuer General.
- for investors, the initial property tax rate will be \$1,500 plus 1.1 per cent of land's value as determined by the Valuer General.

**1.22** These rates will remain unchanged for the first two financial years of the scheme. From 2024-2025 and subsequently years, the tax rates will be indexed each year to per capita Gross State Product in accordance with the provisions of Schedule 2 of the bill. The year-to-year growth of the tax is capped however at a maximum of four per cent.

**1.23** The bill also puts in place restrictions on changes to the rate at which property tax is calculated. Clause 55 provides in part:

- (3) To enable people to properly calculate the costs of investing in land, Parliament recommends that property tax not be increased in the future above the indexed amounts set out in this Act when it is first made.
- (4) The Bill must not be introduced into a House of Parliament unless notice of the proposed Bill is given in the House at least 30 sitting days before the Bill is introduced.

<sup>14</sup> *Hansard*, NSW Legislative Assembly, 12 October 2022, p 20 (proof) (Matt Keen).

<sup>15</sup> *Hansard*, NSW Legislative Assembly, 12 October 2022, p 20 (proof) (Matt Keen).

<sup>16</sup> Property Tax (First Home Buyer Choice) Bill 2022, cls 20 and 22.

<sup>17</sup> Property Tax (First Home Buyer Choice) Bill 2022, cl 20.

- 1.24 Clause 55 further specifies that any future bill before Parliament to increase the rate at which property tax is indexed must be the subject of public consultation, with a summary of the opinions expressed in the submissions to be tabled in each House of Parliament.<sup>18</sup>

### **Assessment and payment of property tax**

- 1.25 Part 6 of the bill deals with how property tax is assessed and paid.
- 1.26 The Chief Commissioner is required to give each individual owner of land subject to property tax a notice of assessment of the property tax payable each financial year. A notice of reassessment must also be given following certain changes that affect the property tax payable. Property tax is payable by the included owner of the land in accordance with the notice of assessment.<sup>19</sup>
- 1.27 As far as practicable, a notice of assessment or reassessment must give an included owner of land subject to property tax an option of paying the property tax in a single instalment or in multiple approximately equal instalments.<sup>20</sup>
- 1.28 Failure to pay property tax when required is a tax default under the *Taxation Administration Act 1996* and the unpaid property tax and interest are a charge on the land.
- 1.29 In his second reading speech, the Treasurer indicated that the Government will provide an online property tax calculator to assist eligible first home buyers in making the choice between property tax and transfer duty. Using this calculator, a prospective first home buyer will be able to ascertain the owner-occupier property tax that would be payable on a particular property and to compare it with an estimate of the transfer duty payable by a first home buyer at purchase.<sup>21</sup>

### **Deferral**

- 1.30 Part 7 of the bill puts in place a deferral scheme intended to support vulnerable homeowners who 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 as part of the property settlement. Homeowners will not be required to sell their principal place of residence in order to meet their property tax obligations.<sup>22</sup>

### **Other provisions**

- 1.31 The remaining parts and schedules of the bill set out provisions in relation to transactions involving land subject to property tax (Part 8), miscellaneous provisions (Part 9), special treatment of certain land (Schedule 1), the meaning of 'owner-occupied' (Schedule 3), saving,

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<sup>18</sup> Property Tax (First Home Buyer Choice) Bill 2022, cl 55.

<sup>19</sup> Property Tax (First Home Buyer Choice) Bill 2022, cl 28.

<sup>20</sup> Property Tax (First Home Buyer Choice) Bill 2022, cl 29.

<sup>21</sup> *Hansard*, NSW Legislative Assembly, 12 October 2022, p 20 (proof) (Matt Keen).

<sup>22</sup> *Hansard*, NSW Legislative Assembly, 12 October 2022, p 21 (proof) (Matt Keen).

transitional and other provisions (Schedule 4), amendment of other acts (Schedule 5) and a dictionary (Schedule 6).

## The rationale for the bill

1.32 In his second reading speech, the Treasurer set out the rationale for the bill as follows:

The Property Tax (First Home Buyer Choice) Bill 2022 gives first home buyers a choice when buying a first home as to whether to pay an up-front stamp duty or to opt in to a small annual property tax. This legislation is founded upon a cornerstone value of this Government—the freedom to choose. Further, this is a signature piece of legislation for the Premier that I am proud to advocate for. This reform will allow first home buyers to overcome one of the greatest barriers to home ownership and achieve their own Australian dream. Buying a first home is one of the most important milestones in a person's life. Homes are where families are raised, where they share time with friends and make memories to last a lifetime. However, too many young people today see the dream of owning their own place as out of reach. That is why the Premier has undertaken this important reform during his time as Treasurer and is delivering it today.

Overall, rates of home ownership in New South Wales have fallen from 70 per cent in the 1990s to 64 per cent in 2021. For younger people aged 25 to 34, the national rate of home ownership sits much lower, at around 41 per cent in 2019-20. It is taking first home buyers longer than ever before to save the funds they need for a deposit and to pay stamp duty. In the 1990s it would take the median New South Wales household, putting aside 15 per cent of their income, around six years to save for a 20 per cent deposit on the median property in New South Wales and one year to save for stamp duty. It now takes that same household around 10 years to save for a 20 per cent deposit and two years to save for stamp duty.

The New South Wales Government is committed to helping the young people of this State open the door to home ownership that too many feel is shut to them. This initiative will empower first home buyers to fast track their path to home ownership by choosing the option that best suits their own financial circumstances and personal aspirations. ...

...

The Premier has led the way to deliver an innovative and exciting policy that puts power back in the hands of first home buyers across the State. Above all else, his policy is about choice. It is about giving first home buyers the choice to decide the pathway to home ownership that best suits their own personal circumstances. His policy is also about the great Australian dream, home ownership. The first home buyer choice legislation opens up new avenues for first home buyers to break into the market and to get a foot on the property ladder. It will reduce the time needed to save for a home by giving young people the option to bypass one of the biggest hurdles faced by many people trying to get their first home: stamp duty. This policy will help more young people right across New South Wales buy their very own stake in our great nation.<sup>23</sup>

<sup>23</sup> *Hansard*, NSW Legislative Assembly, 12 October 2022, pp 20, 22 (proof) (Matt Keen).

## Parties to the inquiry

**1.33** The committee examines the provisions of the bill in the following chapter. However, it is useful to identify the major stakeholders who participated in the inquiry, either through making a submission or giving evidence or both. They were:

- peak legal bodies The Law Society of New South Wales and the Australian Institute of Conveyancers (NSW Division)
- peak housing bodies the Housing Industry Association and the Property Council of Australia (NSW Office)
- peak financial bodies the Australian Banking Association and the Mortgage & Finance Association of Australia
- peak welfare bodies the St Vincent de Paul Society and Shelter NSW
- peak tenant body the Tenants' Union of NSW
- peak pensioner's body the Combined Pensioners & Superannuants Association
- research organisations the Australian Housing and Urban Research Institute, The McKell Institute and the Grattan Institute
- Business NSW
- Professor Nicole Gurrán
- legal professionals Ms Joanne Seve and Mr Matthew Cridland
- Ray White.

**1.34** The committee also received a detailed submission from the NSW Treasury and took evidence from key representatives of NSW Treasury, Revenue NSW and the Office of Valuer General.

**1.35** A full list of submissions and witnesses is provided in Appendices 1 and 2.

## Chapter 2 The provisions of the bill

This chapter provides background information on the Government's proposals for property tax reform in New South Wales before considering issues raised during the inquiry in relation to the provisions of the Property Tax (First Home Buyer Choice) Bill 2022.

### The Government's proposals for property tax reform

- 2.1** The Government's proposals for property tax reform in New South Wales date back to the 2020-2021 Budget, in which the Government announced that it would consult on a proposal to address inefficiencies in the property tax system, reduce barriers to home ownership and boost long-term economic growth.<sup>24</sup>
- 2.2** Subsequently, in November 2020, the Government released a Consultation Paper which proposed the broad policy framework of a property tax:
- the property tax would be an annual tax based on unimproved land value
  - buyers could choose whether to pay property tax or transfer duty
  - once a property was subject to property tax, subsequent owners would have to pay the property tax
  - there would be no change for people who were not buying a property
  - there would be different property tax rates for various ownership groups
  - price thresholds would limit the number of properties initially eligible for transition to the property tax scheme
  - there would be protections for property owners, including a hardship scheme
  - over time the property tax would be revenue neutral
  - existing stamp duty concessions for first home buyers would be replaced with a grant of up to \$25,000.<sup>25</sup>
- 2.3** The Government stated that the proposal would boost home ownership, especially for first home buyers, enhance household mobility and stimulate economic recovery.<sup>26</sup>
- 2.4** In June 2021, the Government released a further Progress Paper which provided additional policy details and updated key elements of the proposal.<sup>27</sup>
- 2.5** Further details on the Government's consultation process concerning property tax reform are provided in the Treasury's submission to this inquiry.<sup>28</sup>

<sup>24</sup> Submission 12, NSW Treasury, p 3.

<sup>25</sup> NSW Treasury, *NSW Property Tax Proposal: Progress Paper for June 2021* (2021), pp 14-15.

<sup>26</sup> NSW Government, *NSW Property Tax Reform Proposal: Property tax factsheet – June 2021* (2021), p 1.

<sup>27</sup> Submission 12, NSW Treasury, p 3.

<sup>28</sup> Submission 12, NSW Treasury, pp 3-4.

**2.6** In its submission, Treasury indicated that the First Home Buyer Choice scheme is the final product of this consultation process:

The Government's final decision builds on the ideas developed in the consultation process, such as the idea of a choice between an annual property tax and stamp duty, different property tax rates for owner-occupied and investment properties, indexation in line with average incomes, and a deferral scheme for households unable to meet property tax payments.<sup>29</sup>

**2.7** As discussed in Chapter 1, the key features of the First Home Buyer Choice scheme are:

- only certain first home buyers are eligible to participate
- the purchased property must be worth less than \$1.5 million
- the purchaser must move into the home within 12 months and occupy it for at least six months
- the purchaser may opt to pay transfer duty or an annual property tax
- after a first home buyer who opted into property tax sells their home, the property tax status would not be retained
- for owner-occupiers, the initial property tax rate will be \$400 plus 0.3 per cent of the unimproved land value of the property
- for investors, the initial property tax rate will be \$1,500 plus 1.1 per cent of the unimproved value of the property
- from 2024-2025 and subsequent financial years, these tax rates will be indexed each year to per capita Gross State Product
- in almost all cases, the year-to-year growth of property tax payments will be capped at a maximum of 4 per cent.<sup>30</sup>

**2.8** Treasury also indicated in its submission that the First Home Buyer Choice scheme is part of a \$2.3 billion package of housing affordability reforms announced in the 2022-2023 Budget. The package includes demand-side measures including the First Home Buyer Choice scheme and a Shared Equity Scheme to address homeownership, and a range of supply-side measures, including initiatives for accelerated infrastructure, planning, social housing, regional housing and First Nations housing.<sup>31</sup>

## **The impact of the bill on first home buyers**

**2.9** The primary focus of the evidence presented to the committee during the inquiry was the impact of the Property Tax (First Home Buyer Choice) Bill 2022 on first home buyers. In short, the bill is anticipated to lower the upfront cost of purchasing a property for first home buyers by replacing transfer duty with an annual property tax.

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<sup>29</sup> Submission 12, NSW Treasury, p 4.

<sup>30</sup> Submission 12, NSW Treasury, pp 5, 6, 7, 8.

<sup>31</sup> Submission 12, NSW Treasury, p 4.

**2.10** In his evidence to the committee, Dr Michael Warlters, Executive Director, Tax Reform Taskforce, NSW Treasury, advised that opting-in to the First Home Buyer Choice scheme will provide significant initial up-front costs savings for eligible first home buyers:

... if all properties priced between \$600,000 and \$1.5 million were subject to property tax rates, the average owner-occupier payment would be about \$1,700. This compares with stamp duty of \$31,000 for an \$800,000 home and \$66,700 for a \$1.5 million home.<sup>32</sup>

**2.11** Treasury in turn estimated that opting-in to the scheme could reduce the time needed by first home buyers to save for a home by 2 to 2.5 years and potentially provide a permanent increase in the rate of home ownership amongst first home buyers:

Depending on individual household saving rates, removing the requirement to pay duty will lower the time needed to save for the up-front costs by around 2 to 2.5 years. This will help to bring forward in time a cohort of first home buyer purchases, providing a permanent increase in the rate of home ownership.<sup>33</sup>

**2.12** As noted previously in Chapter 1, a first home buyer choice calculator has been made available online to assist individuals to make a decision about whether to choose property tax or transfer duty.<sup>34</sup>

**2.13** The decision of a first home buyer to opt-in to the property tax system or instead to pay transfer duty will in part be dictated by the length of time they intend to hold a property. Treasury presented estimates that half of all owner-occupiers sell their properties within 10.5 years, and about two-thirds within 20 years. First home buyers who are likely to sell their property again within 20 years of purchase would generally be better off paying annual property tax rather than up-front transfer duty.<sup>35</sup> Dr Warlters indicated:

A typical New South Wales house has a land-to-market value ratio of around 60 per cent. Units and town houses usually have lower ratios. For all such properties costing between \$800,000 and \$1.5 million, using reasonable assumptions about indexation and discount rates, the present value of property tax paid over 20 years will be less than the relevant stamp duty.<sup>36</sup>

**2.14** Ultimately, however, Treasury indicated that it is for first home buyers to make their own informed decision about whether opting for property tax or transfer duty will be more beneficial for them based on their individual circumstances:

The First Home Buyer Choice is all about an individual's circumstances and the choice that is best for them. For many people, choosing the property tax will almost always result in a lifetime saving compared to stamp duty, and it would always lower the

<sup>32</sup> Evidence, Dr Michael Warlters, Executive Director, Tax Reform Taskforce, NSW Treasury, 27 October 2022, p 57.

<sup>33</sup> Submission 12, NSW Treasury, p 9.

<sup>34</sup> Submission 12, NSW Treasury, p 5.

<sup>35</sup> Submission 12, NSW Treasury, p 5. Also see, Evidence, Dr Warlters, 27 October 2022, p 57.

<sup>36</sup> Evidence, Dr Warlters, 27 October 2022, p 57.

up-front cost of a home. For those who never intend to move out of their home, stamp duty may be the best option.<sup>37</sup>

**2.15** The committee understands from Treasury that it expects around 6,200 eligible individuals to access the First Home Buyer Choice scheme per year, including about two-thirds of first home buyers in the \$800,000 to \$1.5 million price range and approximately 20 per cent of first home buyers in the \$650,000 to \$800,000 price range (buyers in this price range receive transfer duty concessions which push them towards paying transfer duty). Properties purchased for less than \$650,000 are transfer duty free.<sup>38</sup>

**2.16** Some other inquiry participants concurred that the First Home Buyer Choice scheme will lower up-front costs for eligible first home buyers and increase access to the housing market.<sup>39</sup> For example, Ms Nerida Consibee, Chief Economist, Ray White, indicated:

It will definitely benefit some first home buyers. In areas where housing supply is good and the market is less competitive for houses, having extra money, or not having to spend extra money on stamp duty, will be very beneficial for these buyers. That again comes back to areas—often western Sydney. We know that they are well supplied for housing and they are not too expensive. Go to somewhere like Bondi and you look at someone who has a bit of extra money because they not paying stamp duty, they will just spend it on the house because it is very competitive, so it will give them a competitive edge.<sup>40</sup>

**2.17** Ms Consibee added: '... if the aim is to get more first home buyers into the market then this will certainly help many of them.'<sup>41</sup>

**2.18** The committee also heard that the First Home Buyer Choice scheme favours individuals who purchase apartments compared to those who buy freestanding homes. Mr Matthew Cridland, a solicitor specialising in Australian state taxes, explained that this is because the proposed property tax is calculated using unimproved land values.<sup>42</sup> However, he also noted that purchasing an apartment could be a good way to enter the housing market in Sydney, and that as such, the greater benefit flowing to apartment buyers could be seen as appropriate.<sup>43</sup>

**2.19** The point was also made during the inquiry that the scheme strongly favours first home buyers who remain owner occupiers over those who subsequently vacate a property to rent it out as an investment. Such first home buyers face an increase in their property tax of almost 375 per cent.<sup>44</sup>

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<sup>37</sup> Submission 12, NSW Treasury, p 5.

<sup>38</sup> Submission 12, NSW Treasury, pp 5, 9.

<sup>39</sup> See for example, Submission 4, Mr Juan Correa, p 1; Submission 15, Australian Banking Association, p 1; Submission 11, Mortgage and Finance Association of Australia, p 1.

<sup>40</sup> Evidence, Ms Nerida Consibee, Chief Economist, Ray White, 27 October 2022, p 54.

<sup>41</sup> Evidence, Ms Consibee, 27 October 2022, p 55.

<sup>42</sup> Submission 2, Mr Matthew Cridland, pp 3-4; Evidence, Mr Matthew Cridland, solicitor, 27 October 2022, p 15. Also see, Submission 9, Mr Douglas Cummings, p 1.

<sup>43</sup> Evidence, Mr Cridland, 27 October 2022, p 19.

<sup>44</sup> Submission 2, Mr Matthew Cridland, p 2.

**2.20** The committee also notes that some inquiry participants advocated amending the bill to include regular monitoring of the scheme to measure its impact on first home buyers.<sup>45</sup>

### The impact of the bill on house prices

**2.21** In its submission, Treasury stated that the First Home Buyer Choice scheme is not expected to have any noticeable effect on house prices. Treasury supported this statement by explaining that:

- only about 6,200 first home buyers are expected to opt into property tax on average each year over the first four years
- the reform's net cost to State revenue is expected to average about \$160 million per year which is approximately 0.1 per cent of all residential transactions, and about 0.2 per cent of residential transactions between \$600,000 and \$1.5 million
- Sydney house prices are currently falling by about 1.5 per cent per month, and monthly price changes of 1 per cent or more are a regular feature of the residential property market, and that as such upward price pressure of 0.1 per cent or 0.2 per cent is not expected to be noticeable
- the experience in the Australian Capital Territory (ACT), which has also introduced a property tax, is consistent with this expectation.<sup>46</sup>

**2.22** However, certain stakeholders suggested that the scheme could, in fact, inflate house prices.

**2.23** Professor Nicole Gurrán, School of Architecture, Design and Planning, The University of Sydney, argued that demand-side initiatives, particularly those targeted at first home buyers, risk increasing house prices. In particular, Professor Gurrán argued that the scheme may raise prices in the already competitive lower end of the market:

We know already that there is still intense competition at the bottom, if we can call a \$1 million property the bottom of the housing market, but we know that there is already high competition at that level. So there is a risk that the scheme may bolster prices at that point.<sup>47</sup>

**2.24** In turn, Mr Brendan Coates, Economic Policy Program Director, Grattan Institute, stated that the scheme is not a tax reform, but rather a measure to assist first home buyers, and that it will impact house prices:

I wouldn't characterise this as really being a stamp duty reform. This is really another way of assisting first home buyers into the market—not that dissimilar to some of the things like first home buyers grants. The main effect of those, in a long set of research,

<sup>45</sup> Evidence, Dr Michael Fotheringham, Managing Director, Australian Housing and Urban Research Institute, 27 October 2022, p 37. Also see, Submission 14, St Vincent de Paul Society, Shelter NSW and Tenants' Union of NSW, p 1.

<sup>46</sup> Submission 12, NSW Treasury, p 9.

<sup>47</sup> Evidence, Professor Nicole Gurrán, School of Architecture, Design and Planning, The University of Sydney, 27 October 2022, p 45.

is that they tend to raise prices. They tend to be counterproductive. I would classify this legislation as falling into the same boat.<sup>48</sup>

**2.25** By contrast, Mr Leo Patterson Ross, Chief Executive Officer, Tenants' Union of NSW, downplayed the likelihood of any increase in house prices:

.... we do recognise that the first home buyers choice does not fit the definition of a broad-based land tax of the type that we support or of the type that was originally proposed. In effect, it is a support for purchasers of their first property and those kinds of demand-side supports generally do act to inflate the cost of purchasing property for everybody. In this instance, we don't believe the first home buyers choice will act to further inflate the already inflated property market, although it also won't reduce the cost of purchasing overall, which ultimately should be the aim of housing policy.<sup>49</sup>

**2.26** Other stakeholders, such as Mr Michael Buckland, Chief Executive Officer, The McKell Institute, said that the impact of the scheme on house prices will depend on its uptake. He noted a small uptake will result in a minor impact on prices and conversely, a large uptake will result in a more significant increase in prices.<sup>50</sup>

## **The impact on the bill on housing affordability**

**2.27** Beyond the impact of the bill on house prices, the inquiry also examined the broader impact of the First Home Buyer Choice scheme on housing affordability. In general terms, housing affordability encompasses a range of factors, including house prices, but also supply, the ability to service a mortgage or rental repayments, tax and upfront costs.

**2.28** As noted above, the First Home Buyer Choice scheme is a demand side measure for addressing housing affordability. In its submission to the inquiry, Treasury stated that supply rather than demand measures are often more likely to impact prices and affordability:

As a broad simplification, measures that address the supply of homes are likely to have the greatest effects on prices and affordability, while tax reforms can be constructed to increase home ownership by changing the relative prices faced by owner-occupiers and investors.<sup>51</sup>

**2.29** As noted earlier in this chapter, the Treasury submission noted that the 2022-2023 Budget included a range of supply-side measures designed to increase housing affordability.<sup>52</sup>

**2.30** Other inquiry participants presented similar evidence to the committee that the scheme is not a housing affordability measure in a broader sense. For example, when asked if the scheme will

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<sup>48</sup> Evidence, Mr Brendan Coates, Economic Policy Program Director, Grattan Institute, 27 October 2022, p 37.

<sup>49</sup> Evidence, Mr Leo Patterson Ross, Chief Executive Officer, Tenants' Union of NSW, 27 October 2022, p 22.

<sup>50</sup> Evidence, Mr Michael Buckland, Chief Executive Officer, The McKell Institute, 27 October 2022, p 40.

<sup>51</sup> Submission 12, NSW Treasury, p 4.

<sup>52</sup> Submission 12, NSW Treasury, p 4.

increase housing affordability, Professor Gurrán from the School of Architecture, Design and Planning at the University of Sydney, responded:

No ...—this is not to damn the proposal. I think it's a modest proposal, and I actually do think it is very valid to look at barriers to first home purchase. I just don't think it's very well targeted, and I don't think it's an overall housing affordability measure.<sup>53</sup>

**2.31** Mr Buckland from The McKell Institute likewise argued that the scheme is insufficiently broad to increase housing affordability:

To change housing affordability, we need to put downward pressure on prices as a whole. We know that most people are going to move out of their first home within a couple of years. They are going to increase in size. We also know that we need to make it easier for people to downsize as well.<sup>54</sup>

**2.32** Ms Consibee from Ray White stated in turn that there is no one magic bullet to solve housing affordability, and that increasing supply is the best approach.<sup>55</sup>

**2.33** Other inquiry participants also agreed that supply measures, particularly increasing the supply of social and affordable housing, are the most effective way to address housing affordability.<sup>56</sup>

**2.34** In this regard, Mr Patterson Ross from the Tenants' Union of NSW, argued that the \$1.6 billion being spent over the next ten years to administer the First Home Buyer Choice scheme could be better spent on investing in social housing.<sup>57</sup>

**2.35** The joint submission made by the St Vincent de Paul Society, Shelter NSW and the Tenants' Union of NSW also argued that the supply of social and affordable housing funded or facilitated by government should not be impacted by the implementation of the scheme, despite any reduction in revenue as a result of its implementation.<sup>58</sup>

**2.36** Other affordability concerns raised during the inquiry, included:

- shifting the financial burden away from up-front costs to annual repayments carries increased risks in the current financial climate<sup>59</sup>
- the scheme will not help decrease rental payments<sup>60</sup>
- the scheme does not support downsizing and selling off investment properties.<sup>61</sup>

<sup>53</sup> Evidence, Professor Gurrán, 27 October 2022, p 47.

<sup>54</sup> Evidence, Mr Buckland, 27 October 2022, p 41.

<sup>55</sup> Evidence, Ms Consibee, 27 October 2022, p 54.

<sup>56</sup> See for example, Evidence, Mr Coates, 27 October 2022, p 40.

<sup>57</sup> Evidence, Mr Patterson Ross, 27 October 2022, p 25.

<sup>58</sup> Submission 14, St Vincent de Paul Society, Shelter NSW and Tenants' Union of NSW, p 1.

<sup>59</sup> Evidence, Professor Gurrán, 27 October 2022, p 45; Evidence, Mr Coates, 27 October 2022, p 41.

<sup>60</sup> Evidence, Mr Patterson Ross, 27 October 2022, p 24.

<sup>61</sup> Evidence, Mr Buckland, 27 October 2022, pp 41-42.

## Should the scope of the scheme have been broader?

- 2.37** The Government's initial property tax proposal in November 2020 was broader than the legislative framework ultimately provided in the Property Tax (First Home Buyer Choice) Bill 2022.
- 2.38** In his evidence to the committee, Dr Warlters from Treasury argued that there are similarities and differences between the initial and current proposed schemes. He stated that the 'major difference' between the schemes is that the current package has 'narrower focus' and is '... limited to [eligible] first home buyers for the duration that they hold their first home.' However, Dr Warlters noted: 'There are the same tax rates, there's the same indexation, and there's the same deferral scheme.'<sup>62</sup>
- 2.39** Various inquiry participants also cited the narrower scope of the bill when compared to the initial property tax proposal. Ms Adina Cirson, Acting NSW Executive Director, Property Council of Australia, described the scheme '... as a slimmed down version of tax reform' and added '... it's certainly not as far-reaching as we would have hoped.'<sup>63</sup>
- 2.40** Similarly, Mr Buckland from The McKell Institute, which supports a broad-based property tax, believed the current proposed scheme '... walked back probably so much ... that it doesn't achieve a lot of the benefits that it was originally intended to achieve.'<sup>64</sup>
- 2.41** A number of other stakeholders also advocated broadening the scope of the scheme.<sup>65</sup>
- 2.42** The committee notes in particular the evidence of Mr Coates from the Grattan Institute. He urged the Government to consider amending the bill to ensure that once someone has opted a property into the property tax scheme, future buyers would not have the right to opt out again by paying transfer duty.<sup>66</sup>
- 2.43** However, some parties to the inquiry also supported the current scope of the First Home Buyer Choice scheme as a good way of testing the impact of such a reform. For example, the Mortgage & Finance Association of Australia commented:

We note the proposed property tax is much narrower in scope than was previously proposed, with the choice given only to first home buyers that are not otherwise eligible for stamp duty concessions. We believe this narrowed scope is a sensible way of testing out the impact of such a significant reform.<sup>67</sup>

- 2.44** Whilst many parties supported expanding the scope of the First Home Buyer Choice scheme, or at least maintaining its existing scope, the committee also notes that it received evidence from parties completely opposed to any introduction of a property tax or any broadening of such a

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<sup>62</sup> Evidence, Dr Warlters, 27 October 2022, p 60.

<sup>63</sup> Evidence, Ms Adina Cirson, Acting NSW Executive Director, Property Council of Australia, 27 October 2022, p 32.

<sup>64</sup> Evidence, Mr Buckland, 27 October 2022, p 36.

<sup>65</sup> See for example, Ms Consibee, 27 October 2022, p 54; Submission 10, Housing Industry Association, p 3.

<sup>66</sup> Evidence, Mr Coates, 27 October 2022, p 37.

<sup>67</sup> Submission 11, Mortgage & Finance Association of Australia, p 1.

scheme in the future.<sup>68</sup> Of note, the Combined Pensioners and Superannuants Association expressed concern that the proposed property tax for new home buyers was '... the introduction of a universal property tax in NSW by stealth and small beginnings.'<sup>69</sup>

**2.45** As an alternative to the introduction of an annual property tax, albeit of relatively narrow scope, Mr Cridland, solicitor, proposed that the Government should consider allowing eligible first home buyers to elect to pay the stamp duty on their first home in instalments, plus interest, over approximately 15 years. Mr Cridland added: '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.' Mr Cridland argued that this proposal had numerous advantages including:

- there is no distinction between purchasers of freestanding homes and high-rise apartments
- it would not apply different rates for owner-occupiers and investors
- there would be a higher degree of certainty about the tax amount at the time of purchase
- there is no need for annual land valuations or complex rate indexation
- the tax is not payable in perpetuity.<sup>70</sup>

### **The proposed property tax indexation formula**

**2.46** Schedule 2 of the Property Tax (First Home Buyer Choice) Bill 2022 sets out the formula to determine an individual's annual property tax. As previously mentioned, until June 2024 the property tax will be calculated using the following rates:

- for owner-occupiers, the initial property tax rate will be \$400 plus 0.3 per cent of the land's value as determined by the Valuer General
- for investors, the initial property tax rate will be \$1,500 plus 1.1 per cent of land's value as determined by the Valuer General.

**2.47** From July 2024, these rates will be indexed each year to per capita Gross State Product (GSP).<sup>71</sup>

**2.48** In its submission, Treasury explained why GSP was chosen as the index factor:

The growth of GSP per capita provides a measure of average income growth, recognising that households derive income from a variety of sources, not just wages. Nominal GSP per capita is also a relatively stable and predictable series; it captures the effects of inflation and real income growth, as well as shifts in the share of wage and non-wage income.<sup>72</sup>

<sup>68</sup> See for example, Submission 7, Mr Richard Corbett, p 1; Submission 8, Ms Karen Hughes, pp 1-2.

<sup>69</sup> Submission 3, Combined Pensioners & Superannuants Association, p 3.

<sup>70</sup> Submission 2, Mr Matthew Cridland, pp 5-6.

<sup>71</sup> Submission 12, NSW Treasury, p 7.

<sup>72</sup> Submission 12, NSW Treasury, p 7.

- 2.49** Treasury also indicated that the indexation formula lowers the volatility of property tax payments for the average property and diminishes volatility for properties that have land value growth substantially different from that of the average property.<sup>73</sup>
- 2.50** Additionally, clause 24(2)(b)(ii) of the bill provides a 4 per cent cap on year-to-year increases in property tax assessments. As a result, the property tax payable on a property will be the lesser of: (a) the amount calculated by applying the indexed tax rates; or (b) an amount that is 4 per cent higher than the previous year's property tax assessment.<sup>74</sup> Dr Warlters from Treasury noted that the 4 per cent cap on indexation provided greater certainty around potential property tax payments.<sup>75</sup>
- 2.51** The committee notes that during the inquiry, a number of parties raised concerns about the complexity of the indexation arrangements.
- 2.52** Ms Joanne Seve, a solicitor specialising in Australian state taxes, described the formula as 'incredibly complex' and 'unworkable.' According to Ms Seve, there needs to be greater clarity around certain elements of the formula, including whether it is real or nominal GSP and defining 'aggregate land value.'<sup>76</sup>
- 2.53** Similarly, Mr Cridland, solicitor, expressed concerns about the complexity of the formula. He noted that this situation would leave the buyer reliant on the chief commissioner to determine their property tax and may create uncertainty for first home buyers, professional advisers, banks and other mortgage lenders, and future governments.<sup>77</sup>
- 2.54** By contrast, Ms Cirson from the Property Council of Australia, argued it was 'fairly clear' how the formula worked, although she cautioned that it is important to regularly monitor how it operated.<sup>78</sup>

## Consultation, commencement and implementation

- 2.55** Another issue raised during the inquiry was the consultation process associated with the bill and its commencement date.
- 2.56** Several inquiry participants indicated that they had been consulted by the Government as part of work on the initial broad-based property tax proposal.<sup>79</sup> However, parties to the inquiry

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<sup>73</sup> Submission 12, NSW Treasury, p 8.

<sup>74</sup> Submission 12, NSW Treasury, p 8.

<sup>75</sup> Evidence, Dr Warlters, 27 October 2022, p 63.

<sup>76</sup> Evidence, Ms Joanne Seve, solicitor, 27 October 2022, p 14.

<sup>77</sup> Submission 2, Mr Matthew Cridland, pp 2, 3.

<sup>78</sup> Evidence, Ms Cirson, 27 October 2022, p 31.

<sup>79</sup> See for example, Evidence, Mr Chris Tyler, Chief Executive Officer, Australian Institute of Conveyancers (NSW Division), 27 October 2022, p 55.

submitted that there had been less stakeholder consultation in relation to the current bill and proposed scheme.<sup>80</sup>

**2.57** In relation to the commencement of the bill, as noted in Chapter 1, the Treasurer has stated that the Government intends to commence the scheme on 16 January 2023.

**2.58** Various parties expressed concern about this short timeframe. Mr Chris Tyler, Chief Executive Officer, Australian Institute of Conveyancers (NSW Division), said: '... we believe the policy has been rushed and may lead to issues in the execution and delivery of the policy.' Mr Tyler suggested that the bill be deferred until after the State election in March 2023.<sup>81</sup>

**2.59** Similarly, the Australian Banking Association (ABA) referred to the date as 'ambitious' and stated: 'The ABA is concerned that, if further substantive policy changes were made at this stage without a change to the implementation date, there may be insufficient time to introduce the reform.'<sup>82</sup>

**2.60** A pressing implementation issue raised during the inquiry was the availability of land values, particularly for strata lots. In correspondence to the committee, Mr Josh Etherington, Acting Valuer General, Office of the Valuer General, advised that this information is publicly available:

In response to the concerns raised about availability of land values for strata lots, I confirm these land values are publicly available via the online land value search function on our website ...

A land value search may be completed utilising a property number. The property number can be found on a Notice of Valuation, land tax assessment, via our online portal search function using the property address or title reference, or by contacting Valuer General NSW via phone.

The land value search will provide a land value for the strata scheme and a strata unit land value. The strata scheme land value is the land value for the whole site of the strata scheme. The strata unit land value is a proportion of the strata scheme land value based on unit entitlement.<sup>83</sup>

**2.61** The committee also heard concerns about apportioning land values for mixed use complexes which have both commercial and residential lots. Mr Etherington, the Acting Valuer General, responded:

I note the concerns raised by the Committee about apportioning land values for mixed use complexes. These would only be required for properties that do not form part of a strata scheme given the land values are already available for strata units.<sup>84</sup>

<sup>80</sup> See for example, Evidence, Mr Adrian Chek, Co-chair, Revenue NSW/Law Society Liaison Committee, The Law Society of New South Wales, 27 October 2022, p 17; Evidence, Mr Tyler, 27 October 2022, p 51.

<sup>81</sup> Evidence, Mr Tyler, 27 October 2022, pp 50-51.

<sup>82</sup> Submission 15, Australian Banking Association, p 1.

<sup>83</sup> Correspondence, Mr Josh Etherington, Acting Valuer General, Office of the Valuer General, to committee, 27 October 2022.

<sup>84</sup> Correspondence, Mr Etherington, 27 October 2022.

**2.62** In turn, Treasury advised that first home buyers in mixed use properties cannot opt into the scheme. Dr Warlters from Treasury explained:

You can't opt in those properties into mixed use because it's got a business in it. If you look at section 14 of the bill, if there's a business in a property you can't opt it in. So it's purely for properties where 100 per cent of it is a dwelling.<sup>85</sup>

**2.63** The committee also heard of other implementation issues that may need to be addressed before the scheme can commence, including:

- amending the standard contract of sale for a property<sup>86</sup>
- ensuring practitioners, such as conveyancers, understand the scheme<sup>87</sup>
- ensuring the PEXA system is capable of calculating the property tax<sup>88</sup>
- considering whether professional indemnity insurance for conveyancers will increase following the commencement of the scheme and, consequently, if their fees for service will be impacted<sup>89</sup>
- determining if other costs, such as the need for clearance certificates, will be placed on home buyers<sup>90</sup>
- examining alternative means of collecting unpaid property tax (discussed later in this chapter)<sup>91</sup>
- clarifying how transfer duty would be refunded to first home buyers who opt-in to the scheme during the interim period between the passage of the bill through Parliament and the commencement of the scheme, currently intended for 16 January 2023<sup>92</sup>
- allowing banks sufficient time to make changes to their loan application and management systems to support the scheme.<sup>93</sup>

**2.64** Revenue NSW and the Office of the Valuer General told the committee that they are ready to implement the scheme despite the short time frame. For example, Mr Scott Johnston, Deputy Secretary, Revenue NSW, Chief Commissioner of State Revenue, and Commissioner of Fines Administration, advised that Revenue NSW is prepared to implement the scheme if the bill is

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<sup>85</sup> Evidence, Dr Warlters, 27 October 2022, p 62.

<sup>86</sup> Evidence, Mr Richard Harvey, Chair, Property Law Committee, The Law Society of New South Wales, 27 October 2022, p 16. Also see, Evidence, Mr Tyler, 27 October 2022, p 51; Evidence, Mr Dale Turner, Policy Adviser, Australian Institute of Conveyancers (NSW Division), 27 October 2022, p 51.

<sup>87</sup> Evidence, Mr Tyler, 27 October 2022, p 51; Evidence, Mr Turner, 27 October 2022, p 51.

<sup>88</sup> Evidence, Mr Turner, 27 October 2022, pp 52-53.

<sup>89</sup> Evidence, Mr Tyler, 27 October 2022, p 53; Evidence, Mr Turner, 27 October 2022, p 53.

<sup>90</sup> Evidence, Mr Turner, 27 October 2022, p 53. Also see, Submission 5, The Law Society of New South Wales, pp 1-2.

<sup>91</sup> Submission 5, The Law Society of New South Wales, p 2.

<sup>92</sup> Evidence, Ms Seve, 27 October 2022, pp 17-18; Evidence, Mr Cridland, 27 October 2022, p 18.

<sup>93</sup> Submission 15, Australian Banking Association, p 1.

passed by Parliament.<sup>94</sup> He also expressed confidence that Revenue NSW would be able to manage the 'fairly small' increase in the number of client interactions and revenue collection that would be associated with the scheme.<sup>95</sup>

- 2.65** Similarly, the Office of the Valuer General was confident that the New South Wales property valuation system could deliver the valuations which underpin the reforms.<sup>96</sup>

## Other provisions of the bill

- 2.66** A number of other matters were raised during the inquiry in relation to specific provisions of the bill. These are examined below.

### Creation of a charge for unpaid property tax

- 2.67** Clause 38 of the bill creates a charge upon the land for unpaid property tax:

38 Recovery of unpaid amounts

(1) An amount of unpaid property tax is -

(a) a charge on the land, and

(b) the first charge on the land.<sup>97</sup>

- 2.68** In its submission, the Law Society of New South Wales asserted that unpaid property tax should not be a charge on the land:

Unlike land tax and council rates, which are payable despite a change of ownership (subject to any exemptions), the continuance of property tax depends on, inter alia, the purchaser's choice whether or not to opt-in to the property tax scheme. Whether a subsequent purchaser will choose to pay the property tax, depending also upon whether that particular purchaser is eligible to do so, is unknown, and this represents a fundamental difference between the nature of the schemes. In our view, this makes the creation of a charge for unpaid property tax inappropriate as a means of collecting unpaid property tax.<sup>98</sup>

- 2.69** The Law Society of New South Wales made the following suggestions if the provision is maintained:

If unpaid property tax is to remain a charge upon the land, we make two drafting suggestions for further consideration. We suggest the addition of a further subsection

<sup>94</sup> Evidence, Mr Scott Johnston, Deputy Secretary, Revenue NSW, Chief Commissioner of State Revenue, and Commissioner of Fines Administration, 27 October 2022, p 2.

<sup>95</sup> Evidence, Mr Johnston, 27 October 2022, p 8.

<sup>96</sup> Evidence, Mr Josh Etherington, Acting Valuer General of New South Wales, Office of the Valuer General, 27 October 2022, p 2.

<sup>97</sup> Property Tax (First home Buyer Choice) Bill 2020, cl 38(1).

<sup>98</sup> Submission 5, The Law Society of New South Wales, p 1.

explicitly stating that the proposed section overrides the registered proprietor's indefeasibility of title under section 42 of the *Real Property Act 1900*.

...

We also suggest that clause 38(1)(a) may be redundant, noting that clause 38(1)(b) establishes the charge.<sup>99</sup>

### **Relationship between the bill and the *Duties Act 1997***

**2.70** In its submissions, the Law Society of New South Wales also argued that the relationship between the bill and the *Duties Act 1997* is not sufficiently clear:

The proposed new section 18A of the Duties Act (item 5.1 in Schedule 5 of the Bill) provides that Chapter 2 of the Duties Act is subject to the Property Tax (First Home Buyer Choice) Act 2022 ("Property Tax Act"). It is therefore clear throughout the Bill that where the Property Tax Act provides that duty is not payable, the Property Tax Act will override Chapter 2 of the Duties Act. ("Duties Act").

However, there are instances where the Bill provides that "duty is chargeable" (see clauses 43(1)(b)(i), 44(1)(b)(i) and 44(1)(c)(i)). Given that the Duties Act is subject to the Property Tax Act, it is unclear whether this is a separate charging provision to the Duties Act. Given there is limited language in the Property Tax Act which describes how duty is chargeable, it would seem that the Duties Act is enlivened. However, the Duties Act provides for a number of exemptions. In those instances, the Duties Act uses the words "no duty is chargeable" (see, for example, sections 65 and 68 of the Duties Act).

While the word "duty" is defined to mean "duty under the Duties Act 1997, Chapter 2", the phrase "duty is chargeable" does not provide how duty is chargeable. In order to make the drafting clearer, we submit it would be appropriate to either remove the references in the Property Tax Act to "duty is chargeable", thereby letting the Duties Act do the work as intended (ie charging duty subject to exemptions), or by providing that "duty is chargeable under the Duties Act", which would also make it clear that duty is chargeable subject to exemptions.<sup>100</sup>

**2.71** In correspondence to the committee, Mr Johnston from Revenue NSW clarified that under proposed section 5.2 of Schedule 5 of the bill, stating: "Where a person is liable to pay land tax and land owned by the person includes land subject to property tax, land tax will be reduced in proportion to the share of any property tax land in the value of total assessable land."<sup>101</sup>

### **Hardship**

**2.72** Part 7 of the bill set out hardship provisions for landowners struggling to meet property tax payments. Mr Johnston from Revenue NSW advised of the significance of these provisions:

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<sup>99</sup> Submission 5, The Law Society of New South Wales, p 2.

<sup>100</sup> Submission 5, The Law Society of New South Wales, pp 2-3.

<sup>101</sup> Correspondence from Mr Scott Johnston, Revenue NSW, Deputy Secretary, Revenue NSW, Chief Commissioner of State Revenue, and Commissioner of Fines Administration, to committee, 27 October 2022.

This is a really important part of the bill from a perspective of people make a decision at a point in time and things can change in their circumstances whilst they are owning a property. This bill gives me, as chief commissioner, the ability to defer people's payments and continue to do that, which is a new—we don't have that ability in other legislation. What that will mean is it can accrue over time.<sup>102</sup>

- 2.73** Mr Johnston noted the establishment of the hardship board and clarified that there is no intention to take people's homes or force them to sell if they cannot pay their property tax:

There's also an established hardship board, which has been going for many years, where, if a decision was not to support that, there's a second chance to consider those circumstances. There is no intention to take people's homes from this or to force them to sell. There are some strong powers to the chief commissioner to enable that follow through.<sup>103</sup>

- 2.74** Stakeholders supported the inclusion of hardship provisions in the bill.<sup>104</sup> However, it was suggested that such measures may have limited effectiveness. For example, Mr Paul Versteegen, Policy Manager, Combined Pensioners Superannuants Association, stated:

A hardship scheme does nothing for [low-income owner-occupiers] households ... They would simply be asked to pay a tax they can't afford and, despite Government assurances, would sooner or later be forced to sell their homes. It is obvious that today's first home buying household may be a future low-income household unable to pay a property tax, in spite of any benefits conferred on this household when it entered the housing market.<sup>105</sup>

### Other matters

- 2.75** Finally, the committee notes the detailed submission of Ms Seve, solicitor, citing various 'loopholes' in the bill and providing an extensive list of drafting considerations.<sup>106</sup> The committee did not have time to consider in detail all of these issues raised by Ms Seve due to the short timeframe for this inquiry, and accordingly refers the matters to the House.

### Committee comment

- 2.76** The aim of the Property Tax (First Home Buyer Choice) Bill 2022 is to introduce choice for first home buyers purchasing a property in New South Wales – they can continue to pay transfer (stamp) duty or they can opt instead to pay an annual property tax.
- 2.77** The fundamental argument in support of the bill is that by allowing first home buyers to pay an annual property tax, they do not need to meet the significant up-front cost of transfer duty,

<sup>102</sup> Evidence, Mr Johnston, 27 October 2022, p 12.

<sup>103</sup> Evidence, Mr Johnston, 27 October 2022, p 12.

<sup>104</sup> See for example, Submission 14, St Vincent de Paul Society, Shelter NSW and Tenants' Union of NSW, p 1.

<sup>105</sup> Evidence, Mr Paul Versteegen, Policy Manager, Combined Pensioners Superannuants Association, 27 October 2022, p 23.

<sup>106</sup> Submission 1, Ms Joanne Seve, pp 1-6.

thereby allowing first home buyers to enter the housing market sooner than they otherwise might be able to. Treasury estimates that around 6,200 first home buyers will take advantage of the scheme each year, and that the scheme is not expected to have a significant impact on house prices or overall housing affordability, something other parties to the inquiry largely agreed with. Ultimately the scheme is also expected to be revenue neutral to the government.

- 2.78** The arguments against the bill are more varied. Some parties expressed disappointment that the bill does not go further in terms of property tax reform, and that the bill is significantly narrower in scope than the Government's initial reform proposals. Other parties expressed opposition to any introduction of a wider property tax in New South Wales. Others expressed concerns in relation to the operation of specific provisions of the bill, such as the indexation provisions or the provisions dealing with commencement and implementation. Others simply highlighted alternative means by which the Government could tackle the problem of housing affordability for young people, such as increasing the supply of housing or making transfer duty payable over a longer period of time.
- 2.79** In the limited time available to the committee to conduct this inquiry, the committee has not had time to fully explore all of these and other issues in relation to the bill. In these circumstances, the committee refers the bill back to the House and recommends that the House proceed to debate the Property Tax (First Home Buyer Choice) Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during consideration of the bill in committee of the whole.

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### **Recommendation 1**

That the Legislative Council proceed to debate the Property Tax (First Home Buyer Choice) Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during consideration of the bill in committee of the whole.

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## Appendix 1 Submissions

<b>No.</b>	<b>Author</b>
1	Ms Joanne Seve
2	Mr Matthew Cridland
3	Combined Pensioners & Superannuants Association
4	Mr Juan Correa
5	Law Society of New South Wales
6	Australian Institute of Conveyancers (NSW Division)
7	Mr Richard Corbett
8	Ms Karen Hughes
9	Mr Douglas Cummings
10	Housing Industry Association (HIA)
11	Mortgage & Finance Association of Australia
12	NSW Treasury
13	Australian Housing and Urban Research Institute (AHURI)
14	St Vincent de Paul Society, Shelter NSW and Tenants' Union of NSW
15	Australian Banking Association (ABA)

## Appendix 2 Witnesses at the hearing

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Thursday 27 October 2022</b> <b>Jubilee Room, Parliament House, Sydney</b>	Mr Josh Etherington	Acting Valuer General of New South Wales, Office of the Valuer General
	Mr Scott Johnston	Deputy Secretary, Revenue NSW, Chief Commissioner of State Revenue, and Commissioner of Fines Administration
	Mr Nick O'Reilly	Executive Director, Property Reform Implementation, Revenue NSW
	Mr Matthew Cridland	Solicitor, specialising in Australian state taxes
	Ms Joanne Seve	Solicitor, specialising in Australian state taxes
	Mr Richard Harvey	Chair, Property Law Committee, The Law Society of New South Wales
	Mr Adrian Chek	Co-chair, Revenue NSW/Law Society Liaison Committee, The Law Society of New South Wales
	Mr Paul Versteege	Policy Manager, Combined Pensioners Superannuants Association
	Mr Leo Patterson Ross	Chief Executive Officer, Tenants' Union of NSW
	Ms Jemima Mowbray	Policy and Advocacy Manager, Tenants' Union of NSW
	Ms Adina Cirson	Acting NSW Executive Director, Property Council of Australia, NSW Office
	Mr David Harding	Executive Director, Business NSW
	Dr Michael Fotheringham	Managing Director, Australian Housing and Urban Research Institute (AHURI) <i>(via Webex)</i>
	Mr Brendan Coates	Economic Policy Program Director, Grattan Institute <i>(via Webex)</i>
	Mr Michael Buckland	Chief Executive Officer, The McKell Institute
Professor Nicole Gurran	School of Architecture, Design and Planning, The University of Sydney	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Chris Tyler	Chief Executive Officer, Australian Institute of Conveyancers (NSW Division)
	Mr Dale Turner	Policy Advisor, Australian Institute of Conveyancers (NSW Division)
	Ms Nerida Consibee	Chief Economist, Ray White
	Dr Michael Warlters	Executive Director, Tax Reform Taskforce, NSW Treasury
	Mr Ben Fitzgerald	Director, Tax Reform Taskforce, Tax Reform Taskforce, NSW Treasury

## Appendix 3 Minutes

### Minutes no. 71

Wednesday 19 October 2022

Portfolio Committee No. 1 - Premier and Finance

Members' Lounge, Parliament House, Sydney, at 2.01 pm

#### 1. Members present

Ms Moriarty, *Chair*

Mr Borsak, *Deputy Chair*

Ms Boyd

Mr Farlow

Mr Latham (participating)

Mr Martin

Mr Rath

Ms Sharpe

#### 2. Correspondence

The committee noted the following item of correspondence:

##### *Received:*

- 14 October 2022 – Email from Ms Nella Hall to the secretariat advising that Mr Latham would like to be a participating member for the inquiry into the Property Tax (First Home Buyer Choice) Bill 2022.

#### 3. Inquiry into the Property Tax (First Home Buyer Choice) Bill 2022

##### 3.1 Terms of reference

The committee noted the following terms of reference referred by the House on 18 October 2022:

That:

- (a) the provisions of the Property Tax (First Home Buyer Choice) Bill 2022 (not yet accompanied by a Statement of Public Interest), be referred to the Portfolio Committee No. 1 - Premier and Finance for inquiry and report,
- (b) on the President reporting receipt of a message from the Legislative Assembly forwarding the Property Tax (First Home Buyer Choice) Bill 2022 for concurrence, the bill be referred to the Portfolio Committee No. 1 - Premier and Finance for inquiry and report, and
- (c) the committee report by 31 October 2022.

##### 3.2 Extension of reporting date

Resolved, on the motion of Ms Boyd: That the Chair seek a resolution from the House to extend the reporting date of the inquiry to Friday 4 November 2022

##### 3.3 Proposed timeline

Resolved, on the motion of Ms Boyd: That the committee adopt the following timeline for the administration of the inquiry:

- Wednesday 26 October 2022 – submissions close
- Thursday 27 October 2022 – public hearing
- Thursday 3 November 2022 – circulation of chair's draft report
- Friday 4 November 2022 – report deliberative
- Friday 4 November 2022 – report tabling.

**3.4 Stakeholder list**

The committee noted the draft stakeholder list of potential witnesses to appear at the public hearing.

Resolved, on the motion of Mr Farlow: That members be provided with the opportunity to nominate stakeholders to appear as witnesses to give evidence by 9.00 am on 20 October 2022 and that the committee agree to additional stakeholders by email, unless a meeting of the committee is required to resolve any disagreement.

**3.5 Post-hearing responses**

The committee noted that there is insufficient time for stakeholders to provide answers to questions on notice or supplementary questions.

Resolved, on the motion of Ms Sharpe: That transcript corrections and clarifications to evidence be provided within 48 hours of the receipt of the transcript by the witness.

**3.6 Advertising**

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder emails and a media release distributed to all media outlets in New South Wales.

It is no longer standard practice to advertise in the print media.

**3.7 Provision of documents to participating members**

Resolved, on the motion of Mr Farlow: That participating members for the inquiry into the Property Tax (First Home Buyer Choice) Bill 2022 be provided with copies of meeting papers and unpublished submissions.

**4. Adjournment**

The committee adjourned at 2.09 pm, until Thursday 27 October 2022 (public hearing).

Kate Mihaljek  
Committee Clerk

**Minutes no. 72**

Friday 27 October 2022

Portfolio Committee No. 1 - Premier and Finance

Jubilee Room, Parliament House, Sydney, at 10.04 am

**1. Members present**

Ms Moriarty, *Chair* (left at 3.27 pm)  
Ms Boyd  
Mr Farlow  
Mr Latham (substituting for Mr Borsak) (left at 1.15 pm)  
Mr Martin  
Mr Mookhey (participating)  
Mr Rath  
Ms Sharpe

**2. Minutes**

Resolved, on the motion of Mr Farlow: that draft minutes no.71 be confirmed.

### 3. Correspondence

The committee noted the following item of correspondence:

Received:

- 19 October 2022 – Email from Ms Senada Bjelic, Office of Hon Robert Borsak, to secretariat advising that Mr Borsak has nominated Mr Latham to act as a substantive member for the duration of the inquiry into the Property Tax (First Home Buyer Choice) Bill 2022
- 19 October 2022 – Email from Ms Cara Punch, Office of the Opposition Whip, to secretariat advising that Daniel Mookhey will be a participating member for the duration of the inquiry
- 24 October 2022 – Email from Dr Nicola Powell, to secretariat declining the committee's invitation to appear as a witness at the hearing on 27 October 2022
- 24 October 2022 – Email from Ms Emma Penzo, Australian Banking Association, to secretariat declining the committee's invitation to appear as a witness at the hearing on 27 October 2022
- 25 October 2022 – Email from Ms Elyse Cain, NSW Council of Social Service, to secretariat declining the committee's invitation to appear as a witness at the hearing on 27 October 2022
- 25 October 2022 – Email from Ms Caitlin McDowell, Community Housing Industry Association NSW, to secretariat declining the committee's invitation to appear as a witness at the hearing on 27 October 2022
- 25 October 2022 – Email from Mr Gab Chadid, AMP, to secretariat advising that Dr Shane Oliver, AMP, has declined the committee's invitation to appear as a witness at the hearing on 27 October 2022
- 25 October 2022 – Email from Mr Peter Achterstraat AM, NSW Productivity Commission, to secretariat declining the committee's invitation to appear as a witness at the hearing on 27 October 2022 and advising of relevant information to the inquiry included in the 2021 Productivity White Paper
- 25 October 2022 – Email from Mr Jeremy Thorpe, PwC, to secretariat declining the committee's invitation to appear as a witness at the hearing on 27 October 2022
- 26 October 2022 – Email from Ms Sue Sacker, Local Government NSW, to secretariat, advising that the organisation will not be making a submission to the inquiry
- 26 October 2022 – Email from Ms Beatrice Ringrose, Grattan Institute, to the secretariat, providing links to relevant materials written by Mr Brendan Coates.

### 4. Election of the Acting Deputy Chair

Resolved, on the motion of Mr Rath: That, in the absence of the Deputy Chair, Mr Farlow be elected Acting Deputy Chair.

### 5. Inquiry into the Property Tax (First Home Buyer Choice) Bill 2022

#### 5.1 Submissions

Resolved, on the motion of Ms Sharpe: That the committee authorise the publication of submissions 1-7, 9-13.

#### 5.2 Partially confidential submissions

Resolved, on the motion of Ms Sharpe: That the secretariat contact the author of submission no. 8 and request they consider having their submission published as public.

#### 5.3 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, questions on notice, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Mr Josh Etherington, Acting Valuer General of New South Wales, Office of the Valuer General,

- Mr Scott Johnston, Deputy Secretary, Revenue NSW, Chief Commissioner of State Revenue, and Commissioner of Fines Administration
- Mr Nick O'Reilly, Executive Director, Property Reform Implementation, Revenue NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Matthew Cridland, solicitor, specialising in Australian state taxes
- Ms Joanne Seve, solicitor, specialising in Australian state taxes
- Mr Richard Harvey, Chair, Property Law Committee, The Law Society of New South Wales
- Mr Adrian Chek, Chair, Revenue NSW/Law Society Liaison Committee, The Law Society of New South Wales

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul Versteeg, Policy Manager, Combined Pensioners & Superannuants Association of NSW
- Mr Leo Paterson Ross, Chief Executive Officer, Tenants' Union of NSW
- Ms Jemima Mowbray, Policy and Advocacy Manager, Tenants' Union of NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Adina Cirson, Acting NSW Executive Director, Property Council of Australia
- Mr David Harding, Executive Director, Business NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Michael Fotheringham, Managing Director, Australian Housing and Urban Research Institute (via WebEx)
- Mr Brendan Coates, Economic Policy Program Director, Grattan Institute (via WebEx)
- Mr Michael Buckland, Chief Executive Officer, The McKell Institute

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Professor Nicole Gurran, School of Architecture, Design and Planning, The University of Sydney

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Chris Tyler, Chief Executive Officer, Australian Institute of Conveyancers (NSW Division)
- Mr Dale Turner, Policy adviser, Australian Institute of Conveyancers (NSW Division)
- Ms Nerida Consibee, Chief Economist, Ray White

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Michael Warlters, Executive Director, Tax Reform Taskforce, NSW Treasury
- Mr Ben Fitzgerald, Director, Tax Reform Taskforce, Tax Reform Taskforce, NSW Treasury

The Chair left the meeting.

The Deputy Chair took the Chair.

The evidence concluded and the witnesses withdrew.

## 6. Adjournment

The committee adjourned at 3.46 pm, until Friday 4 November 2022 (report deliberative).

Kate Mihaljek  
**Committee Clerk**

### Draft minutes no. 73

Friday 4 November 2022

Portfolio Committee No. 1

Room 1043, Parliament House, Sydney 9.05 am

#### 1. Members present

Ms Moriarty, *Chair*

Ms Boyd (via WebEx)

Mr Farlow (via WebEx)

Mr Latham (via WebEx)

Mr Martin (via WebEx)

Mr Mookhey (participating) (via WebEx)

Mr Rath

#### 2. Apologies

Ms Sharpe

#### 3. Previous minutes

Resolved, on the motion of Ms Boyd: That draft minutes no. 72 be confirmed.

#### 4. Correspondence

The committee noted the following items of correspondence:

##### **Received:**

- 27 October 2022 – Email from Mr Richard Harvey, The Law Society of New South Wales, to committee clarifying evidence he provided at the hearing on 27 October 2022
- 27 October 2022 – Letter from Mr Josh Etherington, Office of the Valuer General, to committee clarifying evidence provided during the hearing on 27 October 2022
- 27 October 2022 – Email from Ms Karen Hughes to secretariat agreeing that her submission can be published as public
- 27 October 2022 – Email from Mr Scott Johnston, Revenue NSW, to secretariat clarifying evidence provided at the hearing on 27 October 2022

##### **Sent:**

- 27 October 2022 – Email from secretariat to Ms Karen Hughes, requesting that her submission be made public instead of partially confidential.

Resolved, on the motion of Mr Martin: That the committee publish the following correspondence:

- Email from Mr Richard Harvey, The Law Society of New South Wales, to committee clarifying evidence he provided at the hearing on 27 October 2022
- Letter from Mr Josh Etherington, Office of the Valuer General, to committee clarifying evidence provided during the hearing on 27 October 2022
- Email from Mr Scott Johnston, Revenue NSW, to secretariat clarifying evidence provided at the hearing on 27 October 2022.

## 5. Inquiry into the Property Tax (First Home Owner Choice) Bill 2022

### 5.1 Public submissions

The committee noted that submissions 8, 14 and 15 were published by the committee clerk under the authorisation of the resolution appointing the committee.

### 5.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Property Tax (First Home Owner Choice) Bill 2022*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Latham: That:

The draft report be the report of the committee and that the committee present the report to the House;

The transcript of evidence, submissions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, and correspondence relating to the inquiry, be published by the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The report to be tabled on 4 November 2022.

### Adjournment

The committee adjourned at 9.07 am *sine die*.

Kate Mihaljek  
Committee Clerk



