



THE LAW SOCIETY
OF NEW SOUTH WALES

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16 June 2016

The Hon. Gladys Berejiklian MP
NSW Treasurer
GPO Box 5469
Sydney, NSW 2001

By email: contact@treasury.nsw.gov.au

Dear Treasurer,

Transfer Duty Bracket Creep

The Law Society suggests it would be timely to address concerns about housing affordability in NSW by dealing with the issue of transfer duty bracket creep.

The Law Society submits that transfer duty rates should be decreased, so that 3.5% is the applicable rate for values from \$80,000 up to \$1 million; and an annual indexation of transfer duty thresholds should be introduced.

1. Overview

Transfer duty thresholds in NSW have not increased to cater for the increase in home prices since the thresholds were introduced in 1986. This means that the impact of bracket creep has resulted in the average home purchaser paying transfer duty at much higher rates than originally intended.

This year, NSW transfer duty brackets (other than the top bracket of 7% for residential land over \$3 million) will have been in place, unchanged, for 30 years. In that time, the median price of homes in Sydney has increased significantly. According to Domain, in the past year, the median house price in Sydney has reached over \$1 million.

The Law Society suggests that transfer duty bracket creep should be addressed by extending the rate applicable to dutiable values of \$80,000 to \$300,000 to dutiable values up to \$1 million. This is because the maximum rate of transfer duty intended to apply to average home buyers is 3.5%, as shown below.

The Law Society considers that addressing transfer duty bracket creep would not only assist average homebuyers in NSW but incentivise turnover which, from empirical evidence, would maintain revenue collections of transfer duty.

The Law Society understands that there has been some unwillingness to address the issue of bracket creep on the basis that any change may fuel an already overheated property market in NSW. There appears however to be significant consensus that some of the heat of the NSW property market, particularly in Sydney, has already begun to dissipate.

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The Law Society also submits that a mechanism for annual indexation of transfer duty thresholds should be introduced. This was recommended by the Collins Tax Taskforce in 1988 and by the NSW IPART Report on the Review of State Taxation in 2008.

2. Background

2.1. Legislative intention and current home values

The *Stamp Duties (Further Amendment) Act 1986* (NSW) ("Act") increased NSW transfer duty rates and introduced the current thresholds. In the Second Reading Speech for the Bill, the following statement was made:

The increased rates for conveyances only affect properties worth more than \$300,000 and thus **will not affect the average home purchaser**.¹ [emphasis added]

This indicates that there was no legislative intention for average home buyers to pay 4.5% or 5.5% rates of transfer duty.

However, according to Domain, in the past year, the median house price in Sydney has reached over \$1 million.² With the median house price of NSW homes having increased significantly over the past three decades (since 1986), many average home buyers are now paying 4.5% or 5.5% transfer duty rates, contrary to the Act's legislative intention.

The Law Society submits that the 3.5% rate of transfer duty should apply up to at least \$1 million.

2.2. Effect of high transfer duty rates on housing market

In addition to the inequity caused by the failure to address transfer duty bracket creep for three decades, the effect of the misaligned transfer duty brackets has been inflation of property prices, through buyers seeking to recover the cost of transfer duty when they subsequently sell the property.

High rates of transfer duty can also be an impediment to turnover. As a result, addressing bracket creep need not result in loss of transfer duty revenue.

Dr Andrew Leigh (now Federal Shadow Assistant Treasurer) and Mr Ian Davidoff, in their paper of September 2013,³ consider housing sales data in Australia over a 13 year period from 1993-2006, and analyse the effect of increases in transfer duty on housing turnover.⁴ Their paper concludes that a 10% increase in transfer duty lowers turnover by 3% in the first year and that over a three year period, a 10% transfer duty increase lowers housing turnover by 6%.⁵ It should follow that the inverse is also the case, namely, that where transfer duty is decreased, turnover is increased.

¹ NSW, *Parliamentary Debates*, Legislative Assembly, 1 December 1986, 7372, <<https://www.parliament.nsw.gov.au/la/papers/Pages/house-papers.aspx?state=housepapers>>.

² Michael Bleby, "Median house price in Sydney tops \$1 million for first time", *Financial Review* (online), 23 July 2015 <<http://www.afr.com/real-estate/residential/median-house-price-in-sydney-tops-1-million-for-first-time-20150722-gihqjk>>.

³ Andrew Leigh and Ian Davidoff, "How do stamp duties affect the housing market?" (2013) *Economic Record* 89, 396–410 < <http://andrewleigh.org/pdf/StampDuty.pdf> >.

⁴ Note 5 at 397.

⁵ Note 5 at 406.

Last financial year, NSW was almost \$1 billion (\$938 million) above Budget in transfer duty “*due to strong growth in residential property transfers*”.⁶ Strong growth in residential property transfers is not necessarily inconsistent with high transfer duty rates operating as a disincentive since, according to the paper, growth could have been even stronger had transfer duty rates been lower.

2.3. Transfer Duty Budget

The latest NSW 2015-16 Half-Yearly Review states that “*Transfer duty revenue in 2015-16 is forecast to be \$863 million higher than at Budget*”.⁷ The Law Society notes that while a substantial number of average home buyers experience higher rates of transfer duty from bracket creep, there have been consecutive windfall gains from transfer duty revenue collections.

3. Empirical Evidence

There is empirical evidence that a reduction in rates of transfer duty incentivises turnover which produces transfer duty revenue. A recent experience of this has been in the ACT where transfer (conveyance) duty rates have been annually decreased⁸ since 2013-14 and yet, with only one year’s exception, the ACT has still recorded an **increase** in its transfer duty revenue collected each financial year compared to the financial year before the decreases (2012-13 of \$225,653,000).⁹

When the ACT first announced the ACT conveyance duty rate reductions in the ACT Budget papers of 2013-2014, the papers included this statement:

“Future increases in conveyance revenue are anticipated as turnover in the property market increases in response to the duty cuts and as market conditions improve more generally.”¹⁰ [emphasis added]

The latest ACT Budget Papers for 2016-17 show that ACT transfer duty collections for the current financial year 2015-16 is budgeted (at \$268,170,000) again, in excess of the transfer duty collected in 2012-13¹¹. Apart from the financial year 2014-15, ACT transfer duty from 2013-14 through to 2019-20 has been or is budgeted to be in excess of the ACT transfer duty collected in 2012-13. This is despite the ACT transfer duty rate cuts. Attached at “A” are figures extracted from ACT Budget Papers.¹²

⁶ NSW Government, *Budget Paper 2 NSW 2014-15*, Chapter 6, 6-11.

⁷ NSW Half Yearly Review for 2015-16, 18

<http://www.treasury.nsw.gov.au/data/assets/pdf_file/0009/127089/2015-16_Half-Yearly_Budget_Review.pdf>.

⁸ ACT, 2013-14 Budget Paper No. 3, table at 96

<http://apps.treasury.act.gov.au/data/assets/pdf_file/0005/455981/3.3-Taxation-Reform.pdf>.

⁹ In 2012-13, the ACT Transfer (Conveyance) Duty revenue was \$225,653 million - see 2013-14 Budget Paper No. 3, Revenue and Forward Estimates, 64

<http://apps.treasury.act.gov.au/data/assets/pdf_file/0012/455979/3.1-Revenue-and-Forward-Estimates.pdf>.

¹⁰ ACT 2013-14 Budget Paper No. 3, 67

<http://apps.treasury.act.gov.au/data/assets/pdf_file/0012/455979/3.1-Revenue-and-Forward-Estimates.pdf>.

¹¹ ACT, 2016-17 Budget Paper No. 3, 227

<http://apps.treasury.act.gov.au/data/assets/pdf_file/0005/870890/Chapter-6-Revenue.pdf>.

¹² Ibid. Additionally, ACT, 2014-15 Budget Paper No. 3, 199

<http://apps.treasury.act.gov.au/data/assets/pdf_file/0011/601031/Budget-Paper-3-Budget-Outlook.pdf>.

Another two jurisdictions, namely Western Australia and the Northern Territory have previously reduced their respective maximum rates of transfer duty. The overall transfer duty revenue collections in the year of that reduction increased in both States. Attached at "B" is a schedule of this data.

In the full financial year that NSW imposed vendor duty (that is, 2004-2005), there was a reduction of over \$1 billion in transfer duty revenue. In the full financial year that vendor duty was abolished in NSW (that is, 2006-2007), transfer duty revenue increased by over \$1 billion. This provides further support for the contention that lower rates of transfer duty will incentivise turnover and not result in lower revenue collections. The schedule attached at "C" below provides data on vendor and transfer duty and the revenue collected in 2004-2005 and 2006-2007 financial years.

4. Collins Tax Taskforce & IPART Recommendations

In 1988, the Collins Tax Taskforce recommended that "the value brackets in the schedule of transfer duty rates should be indexed."¹³

Twenty years later, in October 2008, the NSW IPART Report on the Review of State Taxation stated that the Collins Taskforce recommendation had not been implemented and that:

IPART considers that the purchaser transfer duty rate scale should be indexed annually to avoid 'bracket creep', and thus increase the efficiency of this tax.¹⁴

It is now almost another 8 years since the IPART Report and still nothing has been done by any NSW Government to implement these Collins Tax Taskforce or NSW IPART recommendations.

The IPART Report included (at pp191-192) the following:

While nominal duty rates in the general schedule remained constant in the past twenty years, the effective duty rate has increased as inflation of property values pushed transactions into higher tax brackets. For example, **in June quarter 1987**, the median house price in Sydney was \$92,100 (Real Estate Institute) and **transfer duty payable on it was \$1,713 or 1.86 per cent of the median house price. In June quarter 2007**, the median house price in Sydney was \$525,500 (Real Estate

ACT, 2014-15 Budget Review, 63

<http://apps.treasury.act.gov.au/data/assets/pdf_file/0007/684529/2014-15-Budget-Review-Web-Version.pdf>.

ACT, 2015-16 Budget Paper No. 3, 32

<http://apps.treasury.act.gov.au/data/assets/pdf_file/0004/733765/BP3-Chapter-2-Fiscal-Strategy.pdf>.

¹³ New South Wales Tax Task Force, (1988), Tax Reform and NSW Economic Development: Review of the State Tax System, (D. Collins, Chairman), 264.

¹⁴ NSW IPART Report on the Review of State Taxation, October 2008, 115

<http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/final_report_-_review_of_state_taxation_-_michael_seery_-_17_october_2008_-_pdf_website_document_version.pdf>.

Institute) and **transfer duty payable at that price was \$19,137 or 3.64 per cent of the median house price**. The effect is known as "bracket creep". [emphasis added]

As mentioned above, in the past year, the median house price in Sydney is reported to have reached over \$1 million. The transfer duty on \$1 million is \$40,490, or over 4 per cent of the house price.

The Law Society submits that the NSW Government should review transfer duty brackets and introduce an annual indexation mechanism.

Based on the empirical evidence mentioned above, there shouldn't be a reduction in transfer duty revenue if transfer duty bracket creep is addressed. If Treasury is concerned about this, we believe there could be innovative ways to minimise this risk.

5. Conclusion

The Law Society calls on the NSW Government to address the issue of transfer duty bracket creep. In our view:

1. Transfer duty rates should be decreased so that 3.5% is the applicable rate for values from \$80,000 up to \$1 million; and
2. An annual indexation of transfer duty thresholds should be introduced.

These steps would not only assist average homebuyers, but would incentivise turnover, and in doing so maintain transfer duty revenue collections.

A letter in similar terms has been sent to the Hon. Dominic Perrottet, MP, Minister for Finance, Services and Property.

Thank you for considering this submission. Any questions may be directed to Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or by email to gabrielle.lea@lawsociety.com.au

Yours sincerely,



Gary Ulman
President

ATTACHMENT A

ACT transfer duty revenues (according to the ACT Budget Papers)

- 2012-13 - \$225,653,000;
- 2013-14 - \$226,520,000 (**\$867,000** more than 2012-13 when ACT transfer duty rates were higher);
- 2014-15 - \$215,722,000 (\$9,931,000 less than 2012-13);
- 2015-16 - \$268,170,000 (**\$42,517,000** more than 2012-13 when ACT transfer duty rates were higher);
- 2016-17 - \$266,974,000 (**\$41,321,000** more than 2012-13 when ACT transfer rates were higher);
- 2017-18 - \$271,725,000 (**\$46,072,000** more than 2012-13 when ACT transfer duty rates were higher)
- 2018-19 - \$279,663,000 (**\$54,010,000** more than 2012-13 when ACT transfer duty rates were higher)
- 2019-20 - \$285,528,000 (**\$59,875,000** more than 2012-13 when ACT transfer duty rates were higher)

Reduction in Conveyance Duty rates and impact upon Revenue

The following table (from p161 of Chapter 3 of ACT Budget Paper 3, *2016-17 Budget Paper*) includes that the estimated impact on Revenue of the reduction in Conveyance Duty rates in the ACT will be zero in 2016-17 and positive \$4 million in 2019-20.

See: http://apps.treasury.act.gov.au/_data/assets/pdf_file/0006/870882/Chapter-3-New-Initiatives.pdf

Conveyance Duty – Changes to rates and thresholds

| | 2016-17 | 2017-18 | 2018-19 | 2019-20 | Total |
|---------|---------|---------|---------|---------|----------------|
| | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 |
| Revenue | 0 | -6,000 | -10,000 | 4,000 | -12,000 |

The Government will continue to reduce conveyance duty rates as part of the ACT's Taxation Reform Program. Adjustments to conveyance duty rates will result in changes in estimated conveyance duty revenue. The reduction in conveyance duty rates for 2016-17 that were first announced in the 2012-13 Budget will also be implemented.

From 2017-18, commercial and residential property transactions will have separate conveyance duty rates and duty for commercial property transactions below \$1.5 million will be phased out over two years. A flat rate of 5 per cent will apply to commercial property transactions over \$1.5 million. Residential conveyance duty rates will continue to reduce every year through incremental reductions to the marginal rates.

Further explanation of these changes can be found in Taxation Reform (Chapter 6.3).

Note that in the Budget Papers for 2013-14, when the Conveyance Duty rate reductions were first announced, ACT Conveyance Duty revenue estimates were as follows for the following years:

- 2015-16 - \$242,975,000
- 2016-17 - \$259,846,00

See: p 64: http://apps.treasury.act.gov.au/_data/assets/pdf_file/0012/455979/3.1-Revenue-and-Forward-Estimates.pdf

In the latest Budget Papers for 2016-17, the Conveyance Duty revenue estimates for those years is as follows:

- 2015-16 - \$268,170,000 (ie **\$25,195,000** above Budget)
- 2016-17 - \$266,974,000 (ie **\$7,128,000** above Budget)

See: p227: http://apps.treasury.act.gov.au/_data/assets/pdf_file/0005/870890/Chapter-6-Revenue.pdf

ATTACHMENT B

In WA:

- in 2003-04 the maximum rate of Conveyancing or Transfer duty was **6.3%**;
- in 2004-05 the maximum rate of Conveyancing or Transfer duty was **reduced to 6%** (from 1 July to 28 October 2004) and **5.4%** (from 29 October 2004);
- in 2005-06 the maximum rate of Conveyancing or Transfer duty remained at the **reduced rate of 5.4%**.

The maximum rate of Conveyancing or Transfer duty was **lower** in 2004-05 as compared to the maximum rate in 2003-04. Notwithstanding this, the WA State revenue collected from Transfer Duty on Conveyancing and Transfers in 2004-05 was in fact **greater** than in 2003-04.

Similarly, the maximum rate of Conveyancing or Transfer duty was **lower** for the whole of 2005-06 as compared to the maximum rate in 2005-04 when the maximum rates was higher for part of that year. Notwithstanding this, the WA State revenue collected from Transfer Duty on Conveyancing and Transfers in 2005-06 was **greater** than in 2004-05:

- WA Stamp Duty Conveyancing & Transfers 2003-04 - **\$1,207,271,000** See p 86 WA Department of Treasury Annual Report 2004-05.
- WA Stamp Duty Conveyancing & Transfers 2004-05 - **\$1,218,330,000** See p 86 WA Department of Treasury Annual Report 2004-05.
- WA Stamp Duty Conveyancing & Transfers **2005- 06 - \$1,916,434,000** See p 45 WA Department of Treasury Annual Report 2005-06.

In the NT:

- in 2006-07 the maximum rate of Conveyancing or Transfer duty was **5.4%**;
- in 2007-08 the maximum rate of Conveyancing or Transfer duty was **reduced to 4.95%** (from 6 May 2008);
- in 2008-09 the maximum rate of Conveyancing or Transfer duty **remained reduced at 4.95%**.

Notwithstanding that the maximum rate of Conveyancing or Transfer duty was **lower** for part of 2007-08 compared to 2006-07, the NT revenue collected from Taxes on Property (NB: NT does not have land tax) in 2007-08 was **greater** than in 2006-07.

Similarly, notwithstanding that the maximum rate of Conveyancing or Transfer duty was **lower** for the whole of 2008-09 compared to 2007-08 (where the maximum rate was higher for most of that year), the NT revenue collected from Taxes on Property in 2008-09 was **greater** than in 2007-08:

- NT Taxes on Property 2006-07 - **\$86,500,000** See 2006-07 Budget Paper No 2 - Fiscal & Economic Outlook Item 6. Territory Own-Source Revenue p62 - \$86.5M - Taxes on Property;
- NT Taxes on Property 2007-08 - **\$97,100,000** See 2007-08 Budget Paper No 2 - Fiscal & Economic Outlook Item 8. Territory Own-Source Revenue p 85 - \$97.1M - Taxes on Property;
- NT Taxes on Property 2007-08 - **\$108,500,000** See 2008-09 Budget Paper No 2 - Fiscal & Economic Outlook Item 6. Territory Own-Source Revenue p 61 - \$108.5M - Taxes on Property.

ATTACHMENT C

*Information from NSW Treasury Annual Reports
http://www.treasury.nsw.gov.au/Publications_Page/Annual_Reports

| Year | Transfer Duty Maximum Rate | Vendor Duty Rate | *Revenue Transfer Duty | Revenue Transfer Duty Change | *Revenue Vendor Duty | Total | Total Revenue Change |
|-------|----------------------------|--------------------------|------------------------|------------------------------|----------------------|----------|----------------------|
| 03/04 | 5.5% or 7% (1 month) | 2.25% (1 month) | \$3,916M | - | \$2M | \$3,918M | - |
| 04/05 | 5.5% or 7% | 2.25% | \$2,911M | -\$1,005M | \$371M | \$3,282M | -\$636M |
| 05/06 | 5.5% or 7% | 2.25% (only for 1 month) | \$3,144M | + \$233 | \$92M | \$3,236M | -\$46M |
| 06/07 | 5.5% or 7% | Nil | \$4,163M | + \$1,019 | \$3M | \$4,166M | +\$930M |