

**DUTIES AMENDMENT (ADDITIONAL DUTY FOR FOREIGN PERSONS) BILL 2018**

*Second Reading*

Resumed from 15 August.

**MR P. PAPALIA (Warnbro — Minister for Tourism)** [10.16 am]: I have a contribution to make on the Duties Amendment (Additional Duty for Foreign Persons) Bill 2018. At the outset I make an observation about the extraordinary position the Liberal and National Party scallywags are taking on another revenue-raising opportunity that I thought everyone in Western Australia would support—that is, the opportunity to ensure that foreign property speculators contribute to education outcomes for Western Australians. What a wonderful policy and incredible opportunity. As I understand it, the opposition's objections lie somewhere around the suggestion that mirroring the same rate of additional levy on foreign investors as every other jurisdiction in the country is somehow perverse and wrong—it is an extraordinary suggestion; a ridiculous idea—and that somehow we will drive foreign investors away and that will have a terrible impact on the Western Australian housing construction market. I think that is where the opposition is going. Is it housing construction or just the general property market? I am not really sure, shadow Treasurer.

**Mr D.C. Nalder:** The general property market.

**Mr P. PAPALIA:** It is the general property market. Based on the 2016–17 figures and as the Treasurer indicated the other day, the shadow Treasurer is saying that 1 000 foreign investors of the 50 000 overall investors in the property market in that year would be deterred in some way because they would have had to meet the same levy that was applied everywhere else in the country, and that that would have a massive detrimental impact on the property market, destroy the world and then cause the sky to fall in! I am pretty certain that is the extent of the rigour behind the argument conveyed by the shadow Treasurer. The suggestion is that somehow investors from around the world, particularly the large number of investors who have been coming from China in recent years, and right across the country will be deterred because they will have to meet the same obligations that are imposed everywhere else in the country. That is the opposition's argument.

Let us consider the wider discussion. What drives a property investor? What is their motivation? They are looking for a return on their investment. If a person is looking for a return on an investment in the property sector in Australia at the moment, I recommend they look to Western Australia. Just look at the other places. Look at the overall environment in New South Wales and Victoria; they are on the way down. Those states have had a property boom that is now ending. There has been overinvestment by foreign speculators and others in Sydney in particular and in Melbourne, and, as a consequence, as is always the case with the property market, there is a cycle. In this case, prices are going down. If a person is looking for growth, where would they go? They would go to the state that has finally got a good government, which is resulting in lower unemployment statistics, which I understand were released today, Treasurer. That is another outstanding return from the change in government in March last year.

There is confidence in the Western Australian market. The economy of Western Australia is responding to good leadership. Finally, just about every sector is returning to growth. One of the last to respond will be the housing and construction sector because it responds to demand. Obviously, demand will be driven by recovery in the other sectors of the economy, which are all growing, with the exception of retail, and that is a different matter because that is suffering everywhere around the world. The bricks-and-mortar retailers are suffering. Business will be difficult for them. Growth in every other sector is increasing. If we look at any other category of measurement, Western Australia is in a good place and responding to good leadership by a good state government finally coming to office in March last year. Every economic measurement indicates that we are growing. Fortunately, we are not seeing the steep, unsustainable incline of the boom that was squandered by the Barnett government. It is not that sort of growth. We are seeing steady, consistent and sustainable growth. That will benefit everyone, including the property sector and the housing industry.

As people recognise that there is opportunity in Western Australia, there will be a growing demand for housing of all types. The demand for rental and freehold property will grow. There will be growth because that is how it works. I think the shadow Treasurer understands that it is about supply and demand. At the moment we have excess supply. The demand has been low because the former government trashed the economy. As a consequence, there was no confidence anywhere. People fled the state. We were dropped by the working holiday-makers, and that has contributed to the tourism outcomes. Everything that the former government did to damage the economy resulted in bad outcomes, which we had to try to repair, and we repairing. One of the biggest things we have done is re-imbue the state with a sense of optimism. The state is optimistic, as indicated by the participation rates in the employment statistics. Shane Wright carried out a very good analysis suggesting that if some of the other states had our participation rates, we would have the best unemployment statistics in the country due to the optimism imbued by the great state government that came to office in March last year. As a consequence of that leadership and the change in the psyche of the state, people had the motivation to get out there and have a go. They have

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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a chance now because a good government is driving good outcomes in the state, which has shifted optimism. As a consequence, things are going well.

With respect to the issue we are debating, it is extraordinary that the National Party is leading the Liberal Party in opposing Western Australia having the same levy on foreign speculators as every other jurisdiction, which will therefore return a benefit to the education sector of Western Australia. That is extraordinary. It is not that surprising really. We have seen the Nationals WA drag the Liberal Party around by the nose for some time now. They did that during the last eight and a half years while they were in government. They are continuing to do it in opposition.

**Mr D.T. Redman:** Give it a rest.

**Mr P. PAPALIA:** It is nice that one of them is in the chamber now. It is a sad indictment on the state of opposition politics in Western Australia but it is not really that surprising.

**MR B.S. WYATT (Victoria Park — Minister for Finance)** [10.23 am] — in reply: I rise to respond to some of the issues raised. I thank all members for their contribution to the Duties Amendment (Additional Duty for Foreign Persons) Bill 2018. I want to go through the range of issues that were raised by members of the opposition. Yesterday I expressed my disappointment in the Liberal and National Parties' opposition to this bill and their attempts to block this important policy that we took to the state election, which was overwhelmingly endorsed at the state election. They are now seeking to block its passage through the Parliament. Ultimately, if it does not get through the Parliament, so be it. That just means that rather than revenue paid by foreign investors in property, that will be picked up by Western Australian families. I think that is an unfair and unreasonable outcome for this Parliament to put to Western Australian families. It highlights a common theme of the Liberal Party in this state of spiralling into wreckage; that is, every time I have tried to find a revenue source that does not impact on Western Australian families, it has sought to block that, whether it be an increase in the gold royalty or a foreign buyers surcharge. Indeed, members of the Liberal Party in the upper house opposed these measures and pushed out their own savings measures contained in their own budget. This Liberal Party is now in a spiral of wreckage. I hope it emerges from it in due course.

I want to deal with a few issues and also deal with the arguments raised by the opposition in seeking to block this legislation. That highlights the fact that because the economic analysis lacks rigour, it is more political than economic. Going back to when we announced the surcharge, the deputy president of the Real Estate Institute of Western Australia wrote —

“While there could be a slight impact from this, foreign investment only represents a small proportion of the WA property market,” Mr Collins said.

Damian Collins made that comment. The article continues —

“Instead, the billions of dollars' worth of key transport infrastructure spending will put the property market in a strong position to continue its steady recovery.”

Generally, the property sector is not embracing the extra cost of a small section of people who buy property in Western Australia and is not going to support it, but even that sector recognises that the impact was frankly going to be too inconsequential simply because of the size of the foreign investment market in residential property, particularly those sought to be captured by this bill, which is very limited compared with the situation in most other states in the nation. I want to make this point early. Every other state, whether headed by a Labor or Liberal government, has done this already. Places around the world have done this already. In fact, on a global basis, WA is a very late mover around the concept of foreign investors paying a higher tax of some form when buying residential property in a jurisdiction, therefore contributing to decades of investment by the taxpayers of the home country. That is not unreasonable to request, which is why Labor and Liberal governments all over Australia have already done it. In fact, most introduced it at four per cent. Now it will move to seven per cent. New South Wales will move to eight per cent. I have conversations with those Treasurers on a regular basis; we talk regularly. It has not had any direct impact on their surcharge. Fundamentally, the Australian Prudential Regulation Authority changes have absolutely had a much bigger impact on the investor market. Every state Treasurer will confirm that, and they have confirmed that by their public commentary. I wanted to deal with that issue straight up. The surcharge introduced by other states has not had an impact on their investor market; the APRA regulations have had an impact.

An argument was raised by the opposition that we did not take this change to an election, and therefore we have no mandate.

**Mr F.M. Logan:** Can't govern.

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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**Mr B.S. WYATT:** Correct. I recall taking it to the election. I recall the Leader of the Opposition, then Treasurer, critiquing it. He did critique it; he opposed it. I remember that. Yes, we changed the rate from four to seven per cent. Ultimately, that was for what we all seek at a Treasurer level—effectively, national consistency to remove any distortion. That is all that is about. The shadow Treasurer can laugh. Ultimately, one day when he wears the big shoes, he will work this out. That is what we need to do.

**Mr W.R. Marmion:** Let's have a competitive advantage.

**Mr B.S. WYATT:** We will come to that, because that is a clumsy argument.

I am interested in this. I had a grievance during which the Leader of the Opposition, whilst opposing any revenue measures we did not take to the election, demands I have spending measures that I did not take to the election. Do they understand the madness of the Leader of the Opposition's position? I find this absurd. The Leader of the Opposition—as a former energy minister, he should know this—says that the Economic Regulation Authority is not going to allow that sort of spend and smear it across the network. That has to come through the consolidated account. The Leader of the Opposition wants to spend what we did not take to the election, but when I look for a revenue source to perhaps do those sorts of things, he opposes them.

**Dr M.D. Nahan:** That has nothing to do with it.

**Mr B.S. WYATT:** It has everything to do with it. I suspect that is why the Leader of the Opposition left the finances in such disarray. I suspect that is exactly what happened. He left the finances in such a mess and we are trying to fix them.

It also takes me back, and I want to deal with this early as well, to the three land tax increases introduced by the now Leader of the Opposition, the member for Bateman and the member for Nedlands—they all introduced them as finance ministers.

**Dr M.D. Nahan** interjected.

**The ACTING SPEAKER:** Leader of the Opposition!

**Mr B.S. WYATT:** They talk about impact on the property market. Let me take members through what the Liberal Party did when in government. At the time of that first land tax increase in 2013 by Mike Nahan, the then Treasurer, private dwelling building approvals were growing at a healthy pace of 49 per cent; it was roaring along. Along came the member for Riverton in his ugg boots and confusion and introduced his first land tax increase. What happened after that? Growth moderated from 49 per cent down to 15 per cent within the next 12 months. What did the Treasurer do? He had another go in 2014 and immediately investment fell 10 per cent. That is what the Leader of the Opposition did when he was Treasurer. Then, not happy with that catastrophic fall in private dwelling building approvals, he had another crack, and it was a big one, the one supported so strongly by the member for Bateman—the \$1 billion increase in land tax. That was the third of the three and it was in 2015. This time it smashed the investor market, there is no question; it never recovered. The market plummeted a whopping 24 per cent in just nine months, with a total decline of 50 per cent. That is what the Liberal Party did. I want to remind everybody here about the arguments given by the now Leader of the Opposition and the member for Bateman about why they did that, because the position they take now is quite striking. This is what the Leader of the Opposition, the member for Riverton, said when confronted with the fact that some people were getting land tax increases in excess of 100 per cent from year to year due to the impact of his changes to those rates. I quote the member for Riverton —

What are we supposed to do? We are running the largest deficit in this state's history. We are forecasting a \$2.7 billion deficit this year; it was \$400 million last year, and there will be another deficit next year. We are in the red; we are borrowing to pay recurrent expenses.

So what do we do? The state can only raise revenue in three ways. The first is payroll tax, which we have raised; then land tax, for which we have the lowest rates in Australia, apart from the Northern Territory. The reason the Northern Territory does not levy a land tax is that it is a territory, and a lot of the land is not fee simple, but more importantly, we subsidise it. Western Australia still has the lowest land tax rates in the nation. So what do we do? Faced with a precipitous drop in revenue, a large deficit and the need to provide services ... we raise land tax.

It is interesting, is it not? This is after the Liberal Party went to the election specifically committing not to raise land tax. The position the former Treasurer, who should know better, now takes as we try to find another source of revenue, which will not hit Western Australians, to try to increase that revenue source, is quite interesting. That is something that every other state in the nation has done. Interestingly, the member for Bateman had the pleasure of bringing in the Revenue Laws Amendment Bill that introduced the land tax. The member for Bateman was

**Extract from Hansard**

[ASSEMBLY — Thursday, 16 August 2018]

p4759b-4781a

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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a strong supporter of these increases in land tax, despite the fact that the Liberal Party specifically committed not to do it at the 2013 election. This is what the member for Bateman said —

Western Australia's land taxes are some of the lowest in Australia. In trying to work out what we should be considering for a budget and making sure we remain in surplus, it was foreseen that this was an opportunity to assist in balancing our budget. We are quite comfortable that the rates we are charging are still relatively generous compared to those in other states.

That is interesting; it is a very different view. He then went on to say —

I think all governments consider everything that is at their disposal to ensure that they continue to remain in surplus. We will consider all options at the appropriate time. We cannot give any commitment that land tax or any other tax in this state will or will not be increased in the future. It is just not something ... we ... do. Again, I am trying to deal with what we have before us today, which is the impact from the recent budget announcements. That is what we are trying to get through. I ... cannot speculate ... what may ... be ... the future.

This is the blatant hypocrisy from a party that genuinely smashed the investor market through three increases in land tax in two and half years—making the case that it was in deficit and it had to do these things. Yet, when the Liberal Party moves to the other side of the chamber, it has the gall to attempt to block something that we took to the election. It is something that looks specifically to foreign investors to pick up a small part of the tab of the large deficit left to us by the member for Riverton, the Leader of the Opposition. The Liberal Party now seeks to say that Western Australian families can deal with it; that is the position it has taken. I find that quite stunning to be honest.

I was curious, because at no point during the contributions from the opposition did anyone mention the Foreign Investment Review Board, which suggests to me that no work or research has been done—not one bit.

**Mr W.R. Marmion:** I did.

**Mr B.S. WYATT:** The member for Nedlands did, did he? I must have tuned out.

**Mr P.A. Katsambanis** interjected.

**Mr B.S. WYATT:** Member for Nedlands, I apologise. Clearly, he gave a better speech than most, because neither the Leader of the Opposition nor the shadow Treasurer mentioned the key source of data on foreign investment in this country—the Foreign Investment Review Board. I was surprised that last night in a twitter exchange the shadow Treasurer disclosed his source, which was the website Domain.

**Mr D.C. Nalder** interjected.

**Mr B.S. WYATT:** I did not interject on you at all, big fella! Sit there and listen.

**Mr D.C. Nalder** interjected.

**Mr B.S. WYATT:** The member for Bateman can get up and respond.

At no point did the shadow Treasurer refer to the FIRB. He said that Domain stated that 12 per cent of investment in the residential market in Western Australia is by foreign nationals. Think about that for a minute. Does the shadow Treasurer really believe that? Just think about 12 per cent. Even standing still that does not pass the test. When the shadow Treasurer contradicted the FIRB data last night, which highlighted that in 2016–17 about 1.2 per cent of residential property was sold to foreign nationals, the response of the shadow Treasurer was that Domain said that it was 12 per cent. I decided I wanted to run this to ground, so I looked at Domain to see where the shadow Treasurer got his figure of 12 per cent from, and I want to get on the record that the source of the Domain data is the ANZ/Property Council of Australia survey of the March 2018 quarter, published on 11 January 2018. That is the source of the figure—research done by ANZ and the Property Council of Australia—upon which the shadow Treasurer based his decision to oppose this legislation. Let us get this right: this is the basis upon which the shadow Treasurer is saying that if we do this, the property market will be negatively impacted. This is what the shadow Treasurer and the Liberal Party of Western Australia based their decision on to say to Western Australian families to pick up more burden as opposed to foreign investors in residential properties, because otherwise the broader property market will decline. He has based that on this figure on Domain, the source of which is the ANZ/Property Council of Australia survey. I asked my office to call the ANZ. I wanted to get to the bottom of this 12 per cent figure that the shadow Treasurer talked about. I want to thank the head of Australian economics at ANZ and the Property Council of Australia for taking us through their survey. This is the survey upon which the Liberal Party based its decision and it was of Property Council members only. The survey was very, very limited. What do its members consist of? The main source of revenues consist of developers and valuers. Hopefully, the Liberal Party would know that in any economic debate, we do not want a subset of the total market but the total market. I again draw the house's attention to the basis of the Liberal Party statement that this will

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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have a dramatic impact on the property sector, which is a survey of 114 companies—33 of them were consultants, 30 were developers and 19 were either corporate real estate companies, asset managers and leasing agents. The survey question is interesting: “Over the past three months, what proportion of property sales in your business have been to foreign buyers?” For a start, the subset surveyed is tiny and not representative. Secondly, people are not captured by the surcharge. This would capture all of those properties, including large developments in those construction buildings, which are exempt and will not be paying for that. I even looked at the ANZ Australian economic insight website, and interestingly it specifically references the ANZ/Property Council of Australia survey. This is what it said —

Similar estimates are also found in the ANZ–Property Council survey. Survey respondents from the residential property sector

This is the key point. Listen —

(who are primarily developers and focused on newly constructed dwellings)

The shadow Treasurer is ignoring any foreign investment in established homes—none. His 12 per cent figure, upon which he says, “Well, the entire property market of Western Australia is going to be smashed by this”, is just wrong. He did not go to the Foreign Investment Review Board to look at the actual data that highlights that just over one per cent of foreign investors in residential property would be captured by this in the 2016–17 financial year; he captured them all but eliminated established homes. Honestly, Liberal Party—that is a lazy approach to the important issues around trying to resolve the budget matters. It is also good policy, as every other state in the nation has found.

I want to make another point, because, again, the ham-fisted attack by the opposition is, “It’s xenophobia; that’s what’s going on here”, in its petulant response to the fact that it has been highlighting exactly what happened. Every state in the nation has these surcharges. But, as I have said, most of the nations that those foreigners who purchase residential property in Western Australia come from have had similar infrastructure taxes, or whatever you like to call them, for years, and in many cases they do not even allow foreigners to invest. I want to highlight this. China does not even allow foreign investment; it does not even allow us to buy residential property—full stop. The tax rate in Hong Kong is 15 per cent, and Hong Kong property rates are much higher than ours. India and Indonesia do not allow it. The rate in Singapore is 15 per cent. The rate in Ontario, Canada, which is a part of Canada with which we are often compared, is 15 per cent, and the rate in British Columbia, which is another province with which we are often compared, is 20 per cent. Everywhere around the world these sorts of taxes have been in place for decades. Indeed, some go further than just taxes; they just do not allow foreign investment—full stop. Any suggestion of xenophobia highlights, I think, the paucity of the opposition’s economic argument. It is a very bad argument, as I have just outlined, that referred to Domain.com referencing a survey that was small and irrelevant to the bill. Honestly! What do we have to do to have decent dialogue? I suspect the whole fake news narrative coming out of the United States has affected politics in Australia, and is now affecting Western Australia. The opposition just says whatever it needs to say because it does not want to contribute to the broader repair of Western Australia’s finances.

**Mr W.J. Johnston:** No wonder journalists do not want to talk to him.

**Mr B.S. WYATT:** No wonder the mainstream media is irrelevant, perhaps, to the Leader of the Opposition.

I make that point and I hope that opposition members have all been listening, because the economic data that their shadow Treasurer is running is incorrect, and the impact —

**Mr W.J. Johnston** interjected.

**Mr B.S. WYATT:** It is a lazy analysis.

The property sector itself says that the impact will be limited, even though it does not support it—I get that. But I would have thought that the Liberal Party would know better, or at least support the policy principle of ensuring that foreign investors in the Western Australian residential property market that is captured by our bill pay a contribution to the infrastructure from which they will benefit, as most of the nations that invest in that space in Western Australia demand should we do the same. It is not unreasonable. I think it is a disappointing and very economically clumsy position for the opposition to take. So be it. If the bill does not make it through the upper house, that is another \$100-plus million of debt that will fall to Western Australians to pick up. That is how it works. The arguments raised at every point by the Liberal opposition are wrong and contradictory of everything it said when it was on this side of the house and generally smashing the property investment market with its three land tax increases.

**Mr D.C. Nalder:** What were you saying about revenue when you were on this side of the house?

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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**Mr B.S. WYATT:** It was true. Everyone knows that. Langoulant highlighted that. Everybody highlighted that—Langoulant, the Service Priority Review and the federal Liberal government. Wherever I go, people talk about that. The problem is that since the Liberal Party has moved to that side of the house, it has forgotten to stand for anything, and that is why I will continue to highlight that.

I am actually fairly relaxed about taking this policy to the next election. It is a good policy. We got a strong endorsement last night. If it does not make it through, no doubt we will take it to the next election, and I will articulate this strongly up hill and down dale.

The final contradiction of the Liberal Party is this: households are hurting because of negative mortgage equity. The shadow Treasurer talks about this a lot, but in the same breath—in fact, I wrote it down in the same sentence in his contribution—he said that we have to increase the first home buyers grant and stimulate construction activity at a time when he is critiquing me for the decline in property prices. This is the madness of the Liberal Party. It does not understand whether it is Arthur or Martha. Apparently, it is my fault that property prices have declined, but at the same time the government should pump-prime the construction sector.

**Mr D.J. Kelly:** Economics 101!

**Mr B.S. WYATT:** Economics 101—supply and demand. It is not a particularly complicated issue. I suspect, now that the vacancy rates are returning to normal after members opposite smashed them with their land tax increases, we will probably start seeing better increases in housing prices.

I have one final point. Most members on the other side talked about housing or dwelling approvals. I do not understand why they ignored apartments. I do not get this sort of anger or hatred by the Liberal Party towards apartments, because if we focus on total dwellings as opposed to standalone houses, for the first time in a long time it is growing. The market is actually growing for the first time in a long time. The trend rate for total dwellings is now growing again, with 1.7 per cent growth in June. The shadow Treasurer has taken out apartments from all its data. It is kind of like how he got his 12 per cent. I do not know why. He should have known that. Twelve per cent—seriously? I agree; it is ludicrous to suggest that. Hon Peter Collier should know better; he is tweeting ludicrous stuff as well. The point is that total dwellings are increasing again after huge falls during the previous government and big falls over the last 12 months. I get that, because that is what three land tax increases will do. Thankfully, they appear to have been absorbed, and hopefully we are coming through the Nahan–Nalder-led attack on the property sector through those land tax increases. We should simply say, as every other state in the nation and many other countries have done for many, many years, “If you want to invest in WA, awesome, but you have to pay a small contribution to the infrastructure from which you benefit.” There is only one outcome if members opposite say no to that: the people of Western Australia will have to pick up the tab. That is the reality.

**Mr D.C. Nalder:** That is not right.

**Mr B.S. WYATT:** I get that the shadow Treasurer does not like the reality, but that is the reality, because ultimately that means that I will have to borrow another \$120 million, and who does he think will pay for that? It will not be the foreign investors; the people of Western Australia will pay for that. I get that in the shadow Treasurer’s clumsy, confused little world he does not understand that, but that is the reality. That is all it is.

**Mr D.C. Nalder** interjected.

**The ACTING SPEAKER:** Member for Bateman!

**Mr B.S. WYATT:** Dean, it is not complicated. I think the member for Bateman would support this, but he has been hijacked by the fellow to his left, who is the wrecker. His job is to wreck things while he is there until the member for Bateman or Peter Katsambanis knock him off. I suspect that that will be the outcome. But he should know better.

I am looking forward to taking this policy to the next election should it not go through Parliament. I will talk about this a lot because it is a very good policy—one that, as I said, nations around the world apply to us when we invest, if we are allowed to, in those nations, and one that would ease the burden on Western Australian families. I thank all members for their contribution and look forward to consideration in detail.

*Division*

Question put and a division taken, the Acting Speaker (Mr S.J. Price) casting his vote with the ayes, with the following result —

**Extract from Hansard**  
[ASSEMBLY — Thursday, 16 August 2018]  
p4759b-4781a

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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Ayes (34)

Ms L.L. Baker	Mr W.J. Johnston	Mr P. Papalia	Mrs J.M.C. Stojkovski
Dr A.D. Buti	Mr D.J. Kelly	Mr S.J. Price	Mr C.J. Tallentire
Mr J.N. Carey	Mr F.M. Logan	Mr D.T. Punch	Mr D.A. Templeman
Mr R.H. Cook	Mr M. McGowan	Mr J.R. Quigley	Mr R.R. Whitby
Ms J. Farrer	Ms S.F. McGurk	Ms M.M. Quirk	Ms S.E. Winton
Mr M.J. Folkard	Mr S.A. Millman	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J.M. Freeman	Mr Y. Mubarakai	Ms C.M. Rowe	Mr D.R. Michael ( <i>Teller</i> )
Ms E. Hamilton	Mr M.P. Murray	Ms A. Sanderson	
Mr T.J. Healy	Mrs L.M. O'Malley	Ms J.J. Shaw	

Noes (15)

Mr V.A. Catania	Dr D.J. Honey	Mr S.K. L'Estrange	Mr D.T. Redman
Ms M.J. Davies	Mr P. Katsambanis	Mr W.R. Marmion	Mr P.J. Rundle
Mrs L.M. Harvey	Mr Z.R.F. Kirkup	Dr M.D. Nahan	Ms L. Mettam ( <i>Teller</i> )
Mrs A.K. Hayden	Mr A. Krsticevic	Mr D.C. Nalder	

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Pairs

Mr P.C. Tinley	Mr R.S. Love
Ms R. Saffioti	Mr K. O'Donnell

Question thus passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

*Consideration in Detail*

**Clauses 1 to 4 put and passed.**

**Clause 5: Section 147A amended —**

**Dr M.D. NAHAN:** Apparently this clause deals with changing the definition of residential property and subsequently the definition of property in general to “residential property”. Can the minister explain why it is in the bill and what definitional changes have been made to the existing Duties Act?

**Mr B.S. WYATT:** The current definition of “residential property” deals with the residential exemptions that currently exist. This is obviously a new tax so we need to replace the term “residential property” with “residential land”. It does not change the meaning but it allows us to capture the new tax that the bill seeks to introduce.

**Dr M.D. NAHAN:** In subsequent sections, we will get into the definition of “residential property” in more detail. Because this legislation focuses on a different definition of “residential property” for the purpose of this bill, is that why we have to redefine it?

**Mr B.S. Wyatt:** Yes, that’s correct.

**Dr M.D. NAHAN:** Is a new definition of “property” also being created for the purpose of the act where “property” is being deleted and “residential property” is being inserted?

**Mr B.S. Wyatt:** Correct.

**Clause put and passed.**

**Clauses 6 and 7 put and passed.**

**Clause 8: Chapter 3A inserted —**

**Mr D.C. NALDER:** This clause is about the definition of foreign individuals. I am trying to clarify this. Obviously, an Australian citizen is defined by the Australian Citizenship Act. That is all standard and straightforward, as is the definition of a permanent visa holder. I would not mind some clarity on the holder of a special category visa as defined in the Migration Act. What does that entail; whom does it entail; and why would they have an exemption?

**Mr B.S. WYATT:** An individual is a foreign person if they are not an Australian citizen, within the meaning of the Australian Citizenship Act 2007; the holder of a permanent visa within the meaning of section 30(1) of the commonwealth Migration Act 1958; or—which I think is the member’s question—a New Zealand citizen who is

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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the holder of a special category visa within the meaning of section 32(1) of the Migration Act 1958. I have a bit more information on the issue around the special category visa. To be eligible for a special category visa, the person—I suspect the member already knows this, in light of his question—must be a New Zealand citizen who does not hold another visa; present a New Zealand passport that is in force; not be a behaviour concern non-citizen—for example, someone who has previously been removed from Australia—or not be a health concern non-citizen, such as a person who has tuberculosis; present a completed incoming passenger card; and, meet specific health and character requirements that are presumably set under that special category visa. The visa allows New Zealand citizens to work and study in Australia as long as they remain New Zealand citizens. The treatment of New Zealand citizens on special category visas as non-foreign persons is consistent with other jurisdictions that impose the surcharge, except for New South Wales. New South Wales also requires the New Zealand citizen to have been ordinarily resident in Australia for 200 days or more before the transaction, or to occupy the property as their principal place of residence for a continuous period of 200 days within 12 months after the contract date. I say by way of an aside that I suspect that is because there is a very large New Zealand expat community in New South Wales.

**Dr M.D. Nahan:** It's actually larger in Queensland.

**Mr B.S. WYATT:** Queensland, is it? Either way, it is only New South Wales that has introduced that.

It is also consistent with the first home owner grant scheme, which allows New Zealand citizens with a special category visa to apply for the grant.

**Mr D.C. NALDER:** I find that fascinating about New South Wales, given that New Zealand used to be a part of New South Wales.

**Mr B.S. Wyatt:** And now it is the most hostile state, it appears.

**Mr D.C. NALDER:** A bit like East Fremantle and South Fremantle!

Just coming back onto the definition of foreign persons. I am looking at the process by which they are picked up. Under clause 8 on page 42, it looks like the process relies on a foreign landholder duty declaration to be lodged. They must lodge it —

... on or before the day on which the acquisition statement is required to be lodged under section 200(3), 201(6) or 202(2) in respect of the acquisition.

A failure to lodge could result in a fine of up to \$5 000. I have a couple of questions about the process. What is Treasury or the Department of Finance relying on to ensure compliance? Where will they get their data around the acquisition or transfer of any property? How will they make the link to prove that someone is foreign, and how will we know about people being noncompliant? If I had a million-dollar property, or even five, six or seven million-dollar properties, a seven per cent fee would be several hundred thousand dollars. With a penalty of \$5 000, how do we know that these foreign people purchasing property might say, "I'll risk a \$5 000 fine to save half a million dollars in liabilities." How will compliance be policed?

**Mr B.S. WYATT:** That is a good point. I think the nature of our state's revenue base, they are all the sort of taxes that people like to try not to pay.

**Mr D.C. Nalder:** Avoid.

**Mr B.S. WYATT:** There will of course be audit activity by the Office of State Revenue. I will give a bit of that information. Taxpayers will be requested—in this case the foreign landowner—to complete a declaration for all transactions involving land, whether they are self-assessed, using Revenue Online, or lodged with the commissioner for assessment to identify foreign purchase and to inform whether there is a surcharge liability. The information provided will assist with any subsequent audit activity. Compliance investigations will be targeted at transactions when the information provided results in there being no surcharge liability in the first instance—for example, when it is declared that the purchaser is not foreign. State Revenue will then look at entering into data-matching arrangements to verify a person's residency or citizenship status with federal government agencies such as the Australian Border Force and the Australian Taxation Office, with which, as the member knows, the commissioner currently has the power to share information, and of course they do. Information collected from the ATO's property reporting online system, led by Landgate in WA and supported by State Revenue, will also assist with verifying whether a person is foreign. Data collected from this system includes the buyer's nationality or citizenship, Foreign Investment Review Board application number, and passport and visa details. Although the legislation to mandate the collection of this data has not been passed yet, Landgate is engaging with the conveyancing industry to begin collecting this information in advance of the legislation. Obviously the third process makes it fairly easy as well. Usefully, there is also—I guess this deals with the member's question about

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

---

the penalty of \$5 000 but \$700 000 of duties—a penalty tax of up to 100 per cent of the tax payable if false information is provided to the commissioner.

**Dr M.D. Nahan:** Is false information no information?

**Mr B.S. WYATT:** It will be, because they have to make a declaration.

**Mr W.R. MARMION:** Section 8 covers 40 pages and has nine divisions. We could go all over the place. I am still on the definition of a foreign individual. I note —

**Mr B.S. Wyatt:** By way of interjection: as normal, I am quite happy to answer the questions as they come.

**Mr W.R. MARMION:** Yes. I am suggesting that it might be that we go through some sort of sequential —

**Mr B.S. Wyatt:** As is ever the case, page 5 might be linked to page 30.

**Mr W.R. MARMION:** Yes.

I am on page 4 and the definition of a foreign individual. We had a good explanation of special category; we understand that. For clarity, can the Treasurer give me some examples of who holds a permanent visa? Which categories of people have a permanent visa?

**Mr B.S. WYATT:** I think it is just a permanent resident who has a permanent visa.

**Mr W.R. Marmion:** Yes. But can the Treasurer explain who qualifies to be a permanent resident, where they are from overseas, and what they have to do?

**Mr B.S. WYATT:** I do not know. I suspect they have to live in the country for four years or something?

**Dr M.D. Nahan:** There's all sorts of requirements, then you get a specific permanent resident visa and then that is clear-cut. There are very few variations other than that as permanency.

**Mr D.C. NALDER:** I did not realise the member for Nedlands was jumping back. I would like to stay on this process for a tick for clarification. I picked up—I am trying to make sure I interpreted it correctly—that other acts still need to be amended to either access information or enforce activities. The Treasurer was talking about the process. The Treasurer just read something out that said there was another act that needed to be amended. I did not understand that, and I would like further clarity on that.

**Mr B.S. WYATT:** All states are currently working together to facilitate the passing of data on to the ATO. I assume this happened at a meeting of the Council of Australian Governments. All states are currently developing legislation to pass data on to ATO's property reporting. That is now being developed all around the country. Whether any states have passed it yet, I do not know. That will also add to the process of auditing, once it is through.

**Mr D.C. NALDER:** I return to the definition of a foreign person. How confident are we that the loopholes will be closed off for people who are working their way around the system to avoid the classification of being a foreign person? The Treasurer has clear definitions, but it is really the adherence to that. What level of confidence can we have that we have a good handle on how many foreign persons there are under the current definitions, given that changes to the act are required?

**Mr B.S. WYATT:** That is a good question. Ultimately, the process of foreign investment is pretty rigorous and the Foreign Acquisitions and Takeovers Act is quite punitive as well, if people seek to avoid the requirements under the Foreign Investment Review Board legislation. Other states have not had particular issues with this. There will always be some form of tax avoidance but we are not expecting this to be particularly dramatic because there are a lot of hurdles in any event under commonwealth legislation. It actually makes data sharing easier.

**Dr M.D. NAHAN:** I might go on a little bit—maybe someone can extend my time—to give a little history here. Back in about 2013 the commonwealth government of the day decided that there were too many foreigners buying existing residential properties; it was Joe Hockey. He was worried about those expensive —

**Mr B.S. Wyatt:** The big ones in Sydney.

**Dr M.D. NAHAN:** The big ones in Sydney. We had a Treasurers' meeting and we discussed whether we knew who they were; we had no idea because we did not collect that data. That was not so much dealing with new purchases as existing ones. We agreed to go back to our respective states and find out if we had the data, how we would collect it and how much it would cost. Landgate simply did not have that information. This is different; maybe the Treasurer can confirm that. This is only new transactions beyond the starting date of the legislation—1 January 2019; they wanted to go back. But it was clear to everybody that there was extensive rorting of the FIRB, particularly with regard to the restriction that foreigners had to buy existing properties.

**Mr B.S. Wyatt:** Sorry to interrupt, but from memory he went out and some were forced to sell.

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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**Dr M.D. NAHAN:** Yes, he did. It was in Sydney, his electorate, where they had bought very expensive properties and he forced them to sell. But the general consensus was that we had very poor data and that there were many ways around this, particularly regarding buying existing properties, because FIRB has a ban and a great restriction on them buying existing properties. They have to buy off the plan; they can buy residential properties, but they have to redevelop them, essentially. One of the arguments we will get to later is that we focused on new properties, particularly apartments, because that is where most of the purchases have taken place, particularly in Sydney and Melbourne. That was the real heat in the market. Triguboff, the largest apartment builder in Australia, sells only to Chinese, he says. That is an exaggeration, but he does. This is a real data issue. We are starting from scratch because we do not have it. We are going to put a new system in. I am not going to tell any of my constituents, but I can tell members that foreign ownership of existing residential property is rife out there, all over the place. I will not go into personal issues, but I can guarantee that that is the case, and they have been getting around the FIRB requirements for years. I cannot verify this, but as a result of that I think we have underestimated the amount of foreign ownership or purchases of existing properties and, indeed, apartments.

**Mr B.S. WYATT:** That is an interesting point. I read about it in the media, because Joe Hockey was particularly vocal on that issue. The rigour of the FIRB process is obviously beyond the remit of this chamber, but clearly that will always be an issue. I hope that the estimation of the number is lower, because I would prefer to have upside risk in any revenue assessment, as the Leader of the Opposition would know, as opposed to downside risk. The data is pretty solid. It is as solid as it probably is for any other area of revenue collection. The reliance on those FIRB and visa hurdles makes data sharing and data matching a lot easier, but I suspect the Leader of the Opposition is probably right in his comments about those who are getting around the FIRB requirements. The federal Treasurer has also made the point at Council of Australian Governments meetings—Joe Hockey appears to have, as well—that the government is doing a lot of work around the rigour of the FIRB processes.

**Mr D.C. NALDER:** Just picking up on that point, earlier we talked about the punitive measures and so forth. We are relying on Australian Taxation Office or FIRB information that comes to us. Are we building processes in which there is a two-way flow of information between us and the federal government? If its mechanisms or processes are deficient—we suspect they currently are, and it is trying to tighten them up—will we be feeding information back to the federal government while relying on its information to help us formulate that? I am worried that the data is not satisfactory and that a number of people are jumping through these hurdles. Although the Australian Taxation Office might have punitive measures, such as doubling the fine, if it is not good information and our penalty is only \$5 000, there will still be an incentive for people to try to bypass that and not have to pay this additional duty.

**Mr B.S. WYATT:** Just to clarify: that penalty of up to 100 per cent of the tax payable is our penalty, not the FIRB penalty. FIRB has its own range of penalties. With regard to the data, in my view it is just as rigorous as any other data set around payroll, which of course is another issue. Payers of payroll can avoid it through different things, and it is the job of the Office of State Revenue to manage that. The data for this is just as rigorous as any of those, in my view. It might be of assistance to just read this in about the FIRB requirements. The commonwealth government is responsible for determining and controlling the types of property that foreign persons are allowed to purchase. This is really the point that the Leader of the Opposition was making. Non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia, but there are of course exceptions to that around the place. Ultimately, if as a result of FIRB activity more people are captured over time, I suspect it would be good in a revenue sense and for the commonwealth government to know who is investing in what in this country. I also want to emphasise that the FIRB legislation has criminal penalties, so it is not just fines, it is also jail time.

**Mr P.A. KATSAMBANIS:** Because we are discussing the issue of FIRB and the breadth of FIRB's curbs and limits on foreign residents buying property in Australia, there is one group of foreign nationals that has a blanket exemption for buying a principal place of residence in Australia, and that is people holding temporary residence visas, whether they be students, people on 457 visas or any of the range of temporary visas that enable people to have residence in Australia. It has been well established that they can buy an existing dwelling —

**Mr B.S. Wyatt:** One, yes.

**Mr P.A. KATSAMBANIS:** One. They must buy it solely as a principal place of residence; they cannot rent it out or sublet it or rent individual rooms. If they cease using it as their principal place of residence, either because their visa has expired or they have left the country, then they must sell it within a period of time. Clearly, those people are not captured by the exemptions in the way that “foreign person” has been defined under section 8. They are the people who are primarily driving some of the purchases made by people deemed to be foreigners. There are dozens and dozens of examples in my own electorate and across the northern suburbs. People might come to Australia originally on a 457 visa or some other form of temporary work visa, love it here, bring their family over,

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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and purchase a home. Eventually—some of them very quickly—they get permanent residence and become wonderful citizens of this country. A large part of my electorate comprises people who fit that profile, but they bought their property while they were still on a temporary visa. It is the same with students. Students come here and often buy their own residential property, perhaps assisted by their parents, in the same way that young Australians are assisted by their parents—absolutely no different—to make a stake in Australia. Will the duty that is being introduced apply to these instances of temporary residence? I will let the minister answer. I see that he is nodding. If so, has any modelling or calculation been done on the impact that that will have on housing activities, especially in the northern suburbs?

**Mr B.S. WYATT:** The member is quite correct. I confirm that the surcharge will capture temporary residents who, of course, as the member pointed out, can apply to purchase one established dwelling to use as a residence while they live in Australia, which would normally be conditional on the foreign person selling the property when they leave Australia. As the member said, they cannot rent it out et cetera.

**Mr P.A. Katsambanis:** They get three months after they leave.

**Mr B.S. WYATT:** Yes. The impact on the property market will be small. The Foreign Investment Review Board annual report, released recently for the 2016–17 financial year, reveals that the total approvals for temporary residents was around 2 000 nationwide. There are always a lot more approvals than there are purchases. Let us say that all 2 000 went off and purchased a property. Let us do the assumptions. We have five per cent of foreign students. What is that? Is it 100 of them?

**Mr P.A. Katsambanis:** We have a bigger percentage of 457 visa holders and temporary residents.

**Mr B.S. WYATT:** The temporary residents are not a big purchasing component, according to the FIRB annual report.

**Mr P.A. KATSAMBANIS:** I accept the minister's explanation. It is going to impact on a cohort that clearly wants to make Australia their home. Will those people have the opportunity to seek a refund if they establish roots in Australia, convert their temporary visa into a permanent visa and become Australian citizens, as so many of them have done over the years and who have proven to be wonderful, great Australian citizens?

**Mr B.S. WYATT:** If they become an Australian citizen by the time the transaction is completed, then, yes, there will be a refund. The conversation we have had over the past 24 hours has been about the impact on the market. The numbers are not significant over the whole residential market, which is why the impact is expected to be small. It is smaller in Western Australia than in any other state because of the percentage of foreign investors in residential real estate who will be captured. In other states the exemption does not kick in on large-scale apartment complexes until you get over 50 units, for example; ours is only 10, which is quite low. My view on this is that the demand is fairly inelastic, so other issues will be much more at play. The exchange rate will have a much bigger impact on a decision to invest in any event than will any fees or charges—because all states do it, except us. Similarly, I suspect prospective capital growth will have a much bigger impact.

**Mr P.A. KATSAMBANIS:** I hear what the minister is saying, but the sad fact is that the temporary resident exemption under FIRB is well understood by people moving to Australia, and many of them are coming here, first on a temporary visa, and then converting. It is a well-worn path. The minister should come up to the northern suburbs one day and I will drag out a delegation of dozens of people whom I know personally who have done it and used it as a stepping stone to making this nation their home. It is totally and completely different from foreign investor speculation, either as a safe harbour or as a chase for capital growth.

**Mr B.S. Wyatt:** You're right; both groups will be captured.

**Mr P.A. KATSAMBANIS:** Both groups will be captured. For those foreign speculators, I can understand the logic. I think in this market it does not make a lot of sense, but I can understand the logic. Other members have spoken about the deemed necessity to do that in the eastern states. But that group is different from the group I am talking about; I refer to the ones who already have an exemption under FIRB and can freely purchase residential property, including existing dwellings, because it is their family home. They are moving to Australia to become Australians and to have a home. In introducing any such regime, using that very clear and very well understood and longstanding FIRB exemption would have been a good delineation. I seek the minister's assistance on this. I do not know whether it was considered for people on temporary resident visas who are living in Australia as their permanent place of residence, with strong rules around that. The minister knows that there are very clear rules in tax and foreign investment laws as to what constitutes a principle place of residence. It is a well-understood term. If the minister does not understand that, I am happy to give him a briefing at any time.

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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Was it considered to exempt those people from this regime? Would the minister take it on board to consider in the future so that we are not sending wrong signals to people who are keen to come to Western Australia to put down roots and become long-term permanent Australian residents and citizens?

**Mr B.S. WYATT:** I again emphasise the point: in 2016–17, it was nationwide, so we would have captured five per cent of those—about 100 people. The numbers are small. The reason we did not do that is that we made it consistent with the case in every other state in the nation.

**Mr P.A. Katsambanis:** That's because they don't to apply for them.

**Mr B.S. WYATT:** We are not touching the FIRB process—we cannot—but the process by which the surcharge applies is exactly the same, whether temporary or not.

**Mr P.A. Katsambanis:** They don't need to get an exemption; they don't need to apply to FIRB.

**Mr B.S. WYATT:** I am answering the member's question. There is no difference between what we are proposing and what exists in the member's home state of Victoria, and New South Wales.

**Mr P.A. Katsambanis:** Western Australia is my home state.

**Mr B.S. WYATT:** I refer to the member's adopted state of Western Australia. What we are proposing here is no different from what is occurring in Victoria, New South Wales, South Australia and Queensland. It is a consistent theme and process. The number of people the member is talking about is not large. I suspect that if, indeed, the member is right—that it will have an impact, which I suspect if it does, it will be at the margins because the exchange rate is a bigger driver of these things, or prospects of capital growth—they will rent longer or until they become a citizen, and then they will buy. I suspect that will be the reaction to it.

**Mr P.A. KATSAMBANIS:** The minister says the numbers are not large, but given the figures that the member for Nedlands quite accurately pointed out yesterday in the second reading debate, the actual amounts and the impact on those individual families is huge. We are told consistently that Perth and the rest of Western Australia are suffering an exodus of people. Even today, the government announced a plan to assist knowledge-based people—graduates and people with high skills—to come here. We want to encourage them here. It would be cold comfort to a mining engineer or to someone involved in the lithium industry who might want to come here from another nation to establish roots and bring their family here. Rather than pay rent, they may want to establish roots with a clear pathway. They have the temporary visa and then if the employer likes them, after that period, the employer sponsors them to get a permanent visa. This is a well-worn Western Australian pathway—a wonderful success story for our state. I am talking about those people who want to do that but are confronted with such a payment. If they buy an \$800 000 property, which is an average price for a property in some suburbs, such as Sorrento and Hillarys that I represent—we are not talking about an exorbitant property; just a family home—they will have to pay a duty of \$56 000 on top of the \$32 000 that every other person pays for transfer duty. When the transfer duty is combined with the foreign transfer duty, it is more than 10 per cent of the purchase price for additional duties. I submit to the minister that that is a massive imposition. It would be a huge disincentive for people to actually purchase a property. Some advisers would say that they would be mad to purchase property because in three, four or five years' time, they would be able to avoid it when they become permanent residents. It will just cause them stress and bother. They are not property speculators. They are not buying property in Riverton, East Victoria Park, Sorrento, Padbury or anywhere in the state for that matter—they could be buying it in Kalgoorlie or Geraldton—primarily for capital growth. They might hope to get capital growth over time, like every other Australian home purchaser. Their primary purpose is to buy a residence for their family and to put down roots here.

I say to the Treasurer that this sort of penal duty regime he is introducing for this class of people will be a huge disincentive to choosing to come to Western Australia. It will exacerbate the skill shortages that we are being told are coming. When people have choices, perhaps to go to the United States or somewhere else or come to Western Australia to work in the oil and gas fields or other fields in particular, this penal regime of a transfer duty would stop them from treating Perth as the best place to buy. Obviously, people who do not have many choices of employment find it retributive and difficult, and it is hard for them and their families.

I urge the Treasurer to reconsider the application of this terrible regime to those people who are temporary residents, especially those who are looking to convert their temporary residency into a permanent form of residency in this nation.

**Mr B.S. WYATT:** That is just not correct. For example, the current first home buyers scheme and duties concession does not apply to that class of people. Will the Liberal Party go to the next election promising to apply the concession to them? He can do that. Those people do not get that access as is. The duties concession only applies to permanent residents, citizens and New Zealanders. It does not apply to that class of people. The

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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Liberal Party can take that to the election and extend that out. I will get that costed for the member because that is the reality. It does not apply to those people. The shadow Treasurer knows that. They do not get that already. The scheme is the same.

The member for Hillarys made the point that we are somehow disrupting a clear pathway to citizenship. I wrote that down. We cannot amend the Australian Citizenship Act in this house. We are not obstructing the pathway to citizenship because we cannot, even if we wanted to. There is a process that the commonwealth Parliament deals with on that, and it will deal with that. The member raised the same argument. The member for Warren–Blackwood, and I think the Leader of the Opposition—it was raised by the member for Hillarys—had this idea that people already are, and will continue to, going east as a result of this. They are right: people are going east, where they already pay this levy. We do not have it. This is not a distorting impact because people are willing, at numbers much higher than per capita figures would suggest, to go to Victoria, South Australia and New South Wales, where they do have to pay this levy. We do not yet have it. It is clearly not having that distorting impact. The argument the member put does not make sense because those states are already applying that levy.

I make this point again. The system that we are bringing in is exactly the same as what occurs in every other state in the nation. It is the same reason since the first home buyers grant has been around that it has never been extended to temporary residents. The duties concessions for first home buyers have never extended to temporary citizens. This system is consistent with that. I think the first home buyers scheme might have been a Howard initiative; I cannot remember. That has always been the case. It survived Labor and Liberal governments at state and federal levels for a long period. It is a consistent process. Again, I finalise this point. The numbers that we are talking about are small. The exchange rate and the prospects of capital growth will have a much more dramatic impact than this levy will ever have. If it does have an impact on anyone, if it is that dramatic, I suspect they will wait until they are permanent citizens before they purchase property.

**Mr W.R. MARMION:** I want to raise a particular example. It is probably out of the box. This person is not an investor because they are very wealthy. In my electorate of Nedlands, the Sultan Ibrahim Iskandar paid \$8.5 million for a block of land on the site of the former Sunset hospital. I know that that is substantially higher —

**Mr B.S. Wyatt:** Is that where they are building a house now?

**Mr W.R. MARMION:** Yes, it is the lot at the front. That land was sold off by the state government to fund the development of Sunset.

His figure of \$8.5 million was substantially higher than the other figure that was offered at the time. I understand—the Treasurer may be able to confirm this—that the transfer duty for \$8.5 million is about \$428 000.

**Mr B.S. Wyatt:** Suffice to say, I have not bought too many \$8.5 million properties, so I do not really know.

**Mr W.R. MARMION:** This particular person has bought —

**Mr B.S. Wyatt:** Let us assume the member is correct for the purposes of this scenario.

**Mr W.R. MARMION:** I am building up to a number of follow-up questions.

**Mr B.S. Wyatt:** Next week I'll purchase mine.

**Mr W.R. MARMION:** Yes. This question does not relate to the Treasurer.

Was there scope in such a large transaction to attract that particular person with immense wealth and what that might bring to WA for the Department of Finance to negotiate that transfer duty in that instance? I move on to the current situation.

**Mr B.S. Wyatt:** Just to clarify that, what you mean by “negotiate that transfer duty”?

**Mr W.R. MARMION:** I will ask a straight-out question. Did the sultan pay the proper transfer duty of \$428 000 or thereabouts?

**Mr B.S. Wyatt:** I do not know because, even if I wanted to, I suspect I could not get access to the information, and that has been confirmed. I will assume that the stamp duty would have been as per the act. I do not think there is any capacity for a government of the day to influence that.

**Mr W.R. MARMION:** It is government land. It is because the government owns the land, I would assume.

**Mr B.S. Wyatt:** No; it is still a transfer.

**Mr W.R. MARMION:** Let us move forward to the present day. Suppose that transaction took place now. The additional foreign transfer duty, on top of the \$428 000, is nearly \$600 000. The purchase price will go from \$8.5 million to \$9.5 million if we add both duties onto the purchase price. That may have been enough for the

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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sultan to not buy the property and then the state government would have received only \$7.5 million, and less duty anyway. That is a substantial amount of money. We want to encourage these people to our state.

One of the flow-on benefits of the sultan moving to Nedlands is a donation of \$150 000. That is light compared with what he would have to pay by way of a foreign transfer duty of \$600 000. It is significant. The sultan may not be in Nedlands or another sultan might come to Nedlands in the future and he will not be able to be there.

**Mr B.S. WYATT:** I suspect, without knowing the sultan, that he is probably not too concerned about fees and charges along the way as he no doubt purchases things around the world. I suspect with that house—I went wandering and saw it being built—that he was willing to pay whatever he needed to pay to get the spot. That is more a location, location, location issue for him. I assume the sultan is a wealthy man and is able to purchase these things. I suspect he is fairly ambivalent around the sorts of fees and charges that he would have to pay. As for the amount of tax that he did pay, I can never find that even if I wanted to. The sums sound about correct but I suspect it was probably not a motivating source around his desire to get that particular block of land looking out over the Swan.

**Dr M.D. NAHAN:** One of our critiques of this, and I go back to the issue of foreign students and temporary visas, is the timing. The Treasurer said that the major objective to go from four per cent to seven per cent is uniformity. That is an objective of tax offices to lift things up together, but we have a real problem in this state, and we will debate it later today, that foreign student numbers are struggling. International education is the third largest industry in Australia after the export of iron ore and coal. It is really doing well in Sydney, Melbourne and Brisbane. Melbourne is now the most vibrant city in Australia, with one of the lowest unemployment rates and the highest growth rate. CommSec says it is leading the nation. Its largest industry is international education. RMIT—Curtin University used to be alongside it—leads Australia in drawing in students. The Foreign Investment Review Board looked at this and to promote this industry, as the Treasurer indicated, it gave exemptions to temporary visa holders to allow them to buy existing residential properties, particularly foreign students who want to come here, and, as we described yesterday, it is not just one student, but often brothers and sisters. It is a great lead-in. That is why FIRB did it. It has been debated for a long time and it is a big incentive. That was done consciously. Now the Treasurer and other states have come in and put on a surcharge. I think they started at four per cent and have been boosted to seven per cent and eight per cent. But the cities in question had a grossly overheated market. They destroyed their housing affordability. Sydney's housing affordability is among the worst in the world. In fact, if we divide median income by median house price, we find that prices are 12 times a typical household income, which is the highest figure in the world other than in Hong Kong. Over the last 10 years the ratio in Western Australia, and therefore housing affordability, has improved. Houses have become more affordable, which is good. Those cities had a crisis. We do not have a crisis, except that no-one is buying properties. I think the Labor government has to realise this and put all the rhetoric aside. Maybe not in Nedlands and maybe not in suburbs related to the mining sector, but outside those places, particularly in the new suburbs, the housing market is as flat as a tack and declining. One of the sources of demand is international students. We do not want them only because of their demand for houses; we want them as students, and we will debate this later. International student numbers are tanking in the state; that is the reality. They are going down. We will go through the data later today. Overall, the growth in international students is from mainland China, but they are not coming here, and they will not come here if they have the choice of going to Hobart or here. I do not think Hobart has this tax, or does it? They see a vibrant market in Hobart and a tanking market here, with no visible recovery going on, so they go to Hobart, especially when we bring in the visa requirements and immigration weightings. Perth previously had regional city status, but the government has changed it to capital city status; therefore, immigrants have fewer points to come here.

**Mr P.A. Katsambanis:** Hobart is still regional.

**Dr M.D. NAHAN:** Hobart is still regional. We are hearing evidence from the universities, the TAFEs and StudyPerth that people are getting up and leaving for Adelaide and Hobart. The data is clear. The government had a chance to do what FIRB did and keep that exemption, but it chose to hit international students with this levy and it will lead to less demand for residential properties. I think the government has grossly underestimated this. The figure of 2 000 from FIRB is a creation, because they do not have to report. The government is going to impose another penalty on people coming here as students. It is a serious error.

**Mr B.S. WYATT:** I think the Leader of the Opposition answered his own question. He made the point—I wrote these down—that people are getting up and leaving for Adelaide and Hobart.

**Dr M.D. Nahan:** Students.

**Mr B.S. WYATT:** Yes; and he said that the international student market is doing really well in Sydney, Melbourne and Brisbane. They are all areas that have this levy. Every single one of those areas has had it for some time in some cases. We do not, so clearly the levy is not a factor in people making decisions about where they go to study.

**Extract from Hansard**

[ASSEMBLY — Thursday, 16 August 2018]

p4759b-4781a

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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There are other issues and no doubt, as the Leader of the Opposition said, we will debate those later today. The levy is not a driver one way or the other, because if that were the case, the only logical way that the Leader of the Opposition's argument could have worked out is that as a result of us not having a levy, students would be flooding from places that do have a levy—Sydney, Melbourne, Brisbane, Hobart and Adelaide—to Perth. That has not been the case. The point I make, and that I keep making, is that the levy is not a driver one way or the other. Clearly it is not; otherwise, the argument would be the complete reverse, and it is not. There are other issues at play. I have quoted a few things over the last little while, but I will now quote the deputy head of the Real Estate Institute of Western Australia, Damian Collins, as reported in *The Sunday Times* in September last year. This is what he said about the surcharge —

“While there could be a slight impact from this, foreign investment only represents a small proportion of the WA property market, instead, the billions of dollars' worth of key transport infrastructure spending will put the property market in a strong position to continue its steady recovery,” ...

I think that is right. I am not going to speculate. I successfully buy property at the peak of the market—that is my record in this space! But I suspect that shortly, and we are seeing it now as total dwelling approvals are increasing again for the first time in a long time, there might be room for capital growth as our population gets back to more long-term levels. There might be an opportunity for capital growth, which might drive more foreign investment in Western Australia, but clearly what is not having an impact on those decisions, particularly for those students, is the fact that a levy is in place in other states and not in place here. As the Leader of the Opposition said, those places that have levies are doing really well. People are getting up and leaving for Adelaide and Hobart, which are places that have this levy.

**Dr M.D. NAHAN:** One of the exemptions from this is for people who develop properties to target international students. Is that right?

**Mr B.S. Wyatt:** No, it is above 10 dwellings, which might target international students.

**Dr M.D. NAHAN:** No.

**Mr W.R. Marmion:** No, it is university residential accommodation.

**Dr M.D. NAHAN:** University residential accommodation is exempt. Why is the government doing that? Why is the government exempting university residential accommodation, which I think is bought by foreign purchasers, even if there are fewer than 10 dwellings, if it thinks that this levy on personal purchases of property by foreign students will have no impact at all?

**Mr B.S. WYATT:** I think the question is about the carve-outs. The carve-outs are those that constitute commercial residential premises. That is a definition we picked out of the A New Tax System (Goods and Services Tax) Act 1999. Commercial residential premises are defined in section 195-1 of that act to include —

- (a) a hotel, motel, inn, hostel or boarding house; or
- (b) premises used to provide accommodation in connection with a \*school; or
- (c) a \*ship that is mainly let out on hire in the ordinary course of a \*business of letting ships out on hire; or
- (d) a ship that is mainly used for \*entertainment or transport in the ordinary course of a \*business of providing ships for entertainment or transport; or
- (da) a marina at which one or more of the berths are occupied, or are to be occupied, by \*ships used as residences; or
- (e) a caravan park or a camping ground; or
- (f) anything similar to \*residential premises described in paragraphs (a) to (e).

**Dr M.D. NAHAN:** I want to clarify whether university apartments, or otherwise, that are built targeting university students are not carved out?

**Mr B.S. WYATT:** I suspect they would not be because they are generally built by the universities.

**Dr M.D. Nahan:** Not necessarily.

**Mr B.S. WYATT:** For example, Curtin University is building its own apartments—of course, that will not be captured—and then it will rent them out. Let us just say that a private sector investor wanted to build accommodation for university students, once the number is above 10, it does not apply in any event.

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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**Mr D.C. NALDER:** I want clarify something. The Treasurer referred earlier to a national number of 2 000 and therefore 100 here because it is five per cent.

**Mr B.S. Wyatt:** I just assumed the 100 at five per cent.

**Mr D.C. NALDER:** Yes, of international students.

**Mr B.S. WYATT:** The 2 000 to which I referred was the number of temporary residents buying established properties and students were captured in the conversation that I was having with the member for Hillarys. I will clarify what I was trying to say—hopefully, I can clarify it. In 2016–17, there were 2 000 applications to buy established properties through the Foreign Investment Review Board. The conversation I was having with the member for Hillarys was around students. I said, “Let’s do an assumption around student accommodation, five per cent of current international students here”. That is how I came to 100. There was not a lot of rigour and science to it; I was trying to participate in that debate to make the point that the number is quite small. Hopefully, that clarifies it.

**Mr D.C. NALDER:** That includes those with 457 visas and those coming in under other visa schemes, I would imagine, such as student visas. I am surprised and therefore I question the validity or the rigour of the Treasurer’s data given the briefing that the Liberal Party received from both Curtin University and the University of Western Australia. For example, Curtin University has 56 000 students, of which 26 per cent are international students. I forget the absolute number at UWA, but we were told that 30 per cent of its student base is international students.

**Dr M.D. Nahan:** No, 20 per cent.

**Mr D.C. NALDER:** No, it was 30 per cent. I forget the absolute number, but it was 30 per cent for UWA and 26 per cent for Curtin University. I am surprised. They might not all be residential; they might be going through whatever overseas process. I question the Treasurer’s confidence in this data when anecdotally I have heard from other areas about the size of the international student base in Australia, and five per cent in Western Australia is a lot bigger than those numbers. I am very surprised. I know the Treasurer is referring to FIRB and residential data but we earlier questioned the quality of the FIRB data for various reasons. When I add on 457s and we look at what we experienced between 2006 and 2012 particularly, we would have had a disproportionate share of 457 visa holders in Western Australia relative to the rest of the country. I suggest that the quantity of 100—I get the math process that the Treasurer used to determine that number—would be way, way out of the ballpark of the reality of international people in Western Australia on temporary visas.

**Mr B.S. WYATT:** I suspect a part answer to that is that the students themselves are not buying properties.

**Mr D.C. Nalder:** The parents are.

**Mr B.S. WYATT:** The parents are—correct—and the parents may not be temporary residents. I suspect they are not. They may still be living in Hong Kong or Singapore or wherever and when they buy property, they are not captured by the temporary residence provision. When I was student, I certainly did not buy my property; I was still bludging off the folks. Chances are they are either renting or living in property that they rent off family members who may not be temporary residents. I can only guess the answer to that. The data we have is the data we get from FIRB.

**Dr M.D. NAHAN:** I guarantee the Treasurer that a large number of parents of foreign students who come to Australia, including Western Australia, buy a house or property through their children if the child is a registered international student at a university. I guarantee that—they do. I know of hundreds. The point is that the Treasurer is underestimating the impact of this. The reason that it is only 2 000 is that if the FIRB gave a blanket exemption on this issue, the government would not have the report. The data is bad.

I go back to the issue of exemptions and carve-outs. It says “provide accommodation in connection with a school”. Does that include universities?

**Mr B.S. WYATT:** No is the view here, but I suspect a judge will eventually make those decisions.

**Dr M.D. NAHAN:** What is the difference between a school, a TAFE and a university, particularly a school that has links with a university? There used to be one at Murdoch.

**Mr B.S. WYATT:** That has moved into the city.

**Dr M.D. Nahan:** I think so; yes, that is right.

**Mr B.S. WYATT:** The advice I have is that a school would not include a university and, as I made the point, I suspect that will be subject to debate. But in any event, the levy would not apply to a university building of student accommodation. Looking at the carve-outs from paragraphs (a) to (f), as a lawyer there are a couple of

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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arguments one could make about where it potentially could be attracted to a university. The Goods and Services Tax Ruling on schools might provide some assistance. It says —

Boarding facilities provided by schools, or by another organisation on behalf of, or in connection with, a school or schools, are commercial residential premises.

That is boarding houses, I guess. The view is probably not, but I suspect it is arguable.

**Dr M.D. NAHAN:** Just to clarify, in Melbourne at least there are a number of accommodation places with over 10 units. They are basically boarding houses for university students funded by private capital. A lot of it focuses on international students; sometimes they retain ownership of the property and sometimes they sell it to individual people. But it is very common, which is what Curtin is doing now, we were informed. It is competing with the private sector. The Treasurer's view is that private developments above 10 that are targeted specifically for international students will not be covered by this.

**Mr B.S. WYATT:** No. I have another bit of helpful advice from the GST tax ruling, which I suspect, in any event, a court would look to for guidance; hence, my reference to it. The definition of "commercial residential premises" excludes premises —

... to the extent that they are used to provide accommodation to students in connection with an education institution that is not a school.

So probably not. If it is under 10 and a foreign investor is building whatever it may be, it would be captured unless it is specifically linked to a school, not a university—something that is not a school.

**Mr W.R. MARMION:** I will move on to mixed-use developments. My understanding from the bill is that a mixed-use property is exempt when the land is not used or intended to be used solely or dominantly for residential purposes. That raises the issue of the definition of "solely or dominantly". I immediately look to how a person might avoid paying foreign duty. Stirling Highway might be a good area to look at as an example where residential development has been going on but it has been decided to put in some commercial development so the tax does not have to be paid. If I were a developer in the current system in which a fair bit of infill is going in, what are the barriers? Using Stirling Highway as a good example, can the minister give me a bit of a guideline about if commercial or retail development is put in down the bottom and there is some residential development at the top? What percentage of residential development would mean it is excluded from the tax?

**Mr B.S. WYATT:** It is a good question. The test is whether it is "solely or dominantly" residential. Mixed-use properties where the land is not solely or dominantly for residential purposes, or intended to be used solely or dominantly for residential purposes, is not subject to the surcharge. Of course, the question then becomes: what is "solely or dominantly"? The words are not defined in the Duties Act and take their ordinary meaning. Land is capable of being or is intended to be used "solely" for residential purposes if it is capable of being, or intended to be used exclusively; "solely" is obviously the easy one for these purposes. Land is capable of being or is intended to be used "dominantly" for residential purposes if the main, chief or paramount use of the land is, or is intended to be, for those purposes. I guess the relevant factors would be part of a commissioner's ruling and then, in due course, if it is rejected, a judge's ruling. In determining the sole or dominant use of land, relevant factors may include but are not limited to: the nature and use or intended use of the land, including any buildings; the extent of the various uses of the land and buildings; the proportion of the area that the land and buildings that is capable of being used or intended to be used for residential purposes bears to the total area of the land and buildings; and the proportion of the construction costs attributed to the land and any buildings that are or will be used for residential purposes compared with the total costs. The relevance and weight given to each factor will depend on the facts and circumstances of each case. There is obviously flexibility in there for a determination, which I think is a good thing for everybody. Ultimately, member for South Perth, because the big developments down near Mends Street are way more than 10 dwellings, they are not captured in any event. There is a string of commercial developments along the bottom, but I think there are about 30 floors.

**Mr J.E. McGrath** interjected.

**Mr B.S. WYATT:** Does the member support that one? Sorry; I will not get into that, member for South Perth. That is not captured because it is too big, but they will look at it and say the dominant purpose is residential even though there might be two or three shops along the bottom, which is becoming more and more common. I do not think anyone, hopefully, would want to define it so specifically because we would end up locking down what people will end up building. We want a bit more creativity.

**Mr W.R. MARMION:** I think that is sensible. The minister will note that a lot of commercial buildings are built with a residential property on the top, which makes a lot of sense. If developers were building a small commercial

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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property, they could make sure from the very beginning a massive great penthouse was built on the top. It would be just one very large penthouse —

**Mr B.S. Wyatt:** Is this where you live, member for Nedlands?

**Mr W.R. MARMION:** West Perth is typically where it would be done. It may be two storeys. The developer would make sure there were 10 commercial storeys and the eleventh unit was a massive apartment on the top so it would be covered by having more than 10 units.

**Mr B.S. WYATT:** I suspect the commissioner would look at the issues around floor space and the cost of each part of it then, in due course, they would make the member for Nedlands pay that cost in his vast residential apartment in West Perth.

**Mr D.C. NALDER:** I want to consider the number of dwellings that drive the exemption. If I understood the minister correctly from what he said earlier, this is different from the eastern states, which are looking at 50 dwellings whereas we have 10 dwellings here. Why is the number 10? Why is it not nine or eight? What is the basis on which the decision was taken to, firstly, vary the number from that in the other jurisdictions and, secondly, to define the number 10?

**Mr B.S. WYATT:** It is a good question. It could be “pick a number” to a certain extent.

**Mr W.R. Marmion:** There are 11 in a cricket team.

**Mr B.S. WYATT:** It is true there are 11 in a cricket team; we could go to 11 if the member would like.

Beautiful! There is some science behind it. The definition of commercial land for the purposes of the Foreign Investment Review Board generally includes land in Australia in which the number of dwellings that could reasonably be built is 10 or more, so we have captured that. For whatever reason, other states have used bigger numbers and it might be because of the Triguboff scenario, considering the issues raised by the Leader of the Opposition earlier on. They might have wanted to capture those scenarios and not some of the smaller ones; I do not know their reasoning for having 50.

**Mr W.R. MARMION:** I have one other thing to clarify. There may be an implication for couples if one person is foreign and the other is not if they have a joint tenancy or a tenancy in common. The partner who is an Australian citizen may manage to talk the other party into buying it in their name but six months or 12 months later, they separate and there will be issues whether they were a de facto couple or married. There may be unintended consequences of someone not getting their fair portion of a sale because they had a foreign partner. What is the minister’s comment on that?

**Mr B.S. WYATT:** It is a good question. The issue is: what is the surcharge treatment if a residence is purchased by a married couple or de facto partners and one is a foreign person? The surcharge is charged on the value of the interest acquired by the foreign spouse or de facto partner. The policy is that if the spouse or de facto partner is foreign on the date of the agreement of purchase, the residential property surcharge will apply to the transaction, which is consistent with all other jurisdictions that impose the surcharge, except for Victoria. I will get to Victoria in a minute so the member knows the difference. If the person is not foreign when the property is transferred to them—for example, as we talked about before, if they obtain permanent residency between the agreement date and the transfer date—they are then entitled to a reassessment and refund of any of that surcharge. If the residential property is purchased solely by the Australian spouse or de facto partner, an exemption from transfer duty can apply if a half share of the property is later transferred to the de facto spouse once they become a permanent resident. Victoria has recently introduced an exemption from the surcharge for foreign purchasers who jointly purchase a principle place of residence with their spouse or domestic partner who is an Australian citizen, permanent resident, or New Zealand citizen.

**Dr M.D. NAHAN:** I would like to get the minister’s explanation on this, which is not just this bill; the other states have done it. If we want to get foreigners to pay their fair share of revenue, why is there a cut-off —

**The ACTING SPEAKER (Ms M.M. Quirk):** Leader of the Opposition, can I point out that you should know that hand gestures are not reflected in *Hansard*.

**Dr M.D. NAHAN:** That is very good; thank you very much. I will stand here with my hands in my pockets.

**The ACTING SPEAKER:** Either that, or you just explain to *Hansard* that you want inverted commas around something.

**Dr M.D. NAHAN:** Okay; we will leave that to you to explain to them.

I want to ask why there are exemptions. Why is not applied across the board to large and small developments if, in fact the government’s objective is to get revenue? Why is there an exemption above 10 dwellings, particularly when many of the large developments, at least interstate, sell their apartments—we expect them to be apartments

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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rather than houses or individual dwelling units—to foreigners? That is the evidence that I understand. Why do we have the exemption at all if the objective is for foreigners to pay their fair share?

**Mr B.S. WYATT:** If foreigners then buy those apartments, of course, they will then still have to pay that surcharge. Other than that, it is okay. Of course, it is like a first home owner grant applying just to new builds now. I get what the member is saying. If we say we do not want to discourage the construction sector being incentivised to build larger buildings, we are impliedly saying that there is a disincentive here. When those larger projects—housing estates, whatever you call them, and apartment complexes—are built, the margins can be quite thin. I think it is recognising that the Foreign Investment Review Board has a commercial limit. Looking at the other states, they have different ones—some as high as 50. It is really just to strike a balance somewhere in there at around what point the threshold applies.

**Dr M.D. NAHAN:** I understand that FIRB has slightly different objectives, I suppose. They are really to use its resources to monitor foreign investment in Australia. It has size cut-offs across the board. Fair enough. But this is revenue earning; this is a duty to raise revenue. Here we have a development by a foreigner with fewer than 10 dwellings, and they get hit. Then if they plan to sell their properties to foreigners—it may not be planned, but that is what happens—they pay tax on the development, and then the individual who purchases the property pays the tax of seven per cent, too. That significantly increases, at seven per cent, the disincentive for foreign parties to build properties fewer than 10 in number. That is double taxation. If the other four per cent or otherwise is added, that is a hell of a lot of duty on building small apartment complexes. It could easily get up to aggregate duty pushing 20 per cent. Okay? I do not understand that. Then there is an exemption for the larger ones. I think I know the real reason for the exemption. It is that this duty will have a significant impact on the development of large apartment complexes. That is what it was actually meant to do in Melbourne—to slow down those developments. That is why 50 dwelling units was the limit. It was increased because the Victorian government knew it would really impact the number of medium-sized dwellings, which the government of the day had a policy of promoting. I think the Treasurer has traded off his revenue collection objectives, knowing full well that if the government puts this duty on high-rise developments, they will be killed off. This duty will impact on the demand for and building of dwelling units, and the Treasurer is putting limits in the legislation to recognise and minimise that, but that goes against the rhetoric that this will not have a major impact on the incentive to develop.

**Mr B.S. WYATT:** I understand the member's argument. I say again that the numbers we are talking about are small. I think the member made the point that it might incentivise people who would otherwise build eight to build 11. Who knows? I suspect in terms of those larger ones—like in Queensland and Victoria, where 50 is the threshold—on that scale of big, big investments, the surcharge is just a tiny part of the total cost of what they are doing. I dare say it has probably had limited impact. Of course, like our proposal, if they sell to a foreign national, the surcharge will apply. So, yes.

**Dr M.D. NAHAN:** Did the Treasurer collect any data on the proportion of major high-rise developments in the last few years in Perth that have been sold to foreign nationals? My understanding is that in the eastern states—I have never seen this data for Perth—it is a very, very high percentage. My point is not that it is foreign nationals, but that most are sold off the plan in advance. Right now, there are some difficulties selling these off the plan, and therefore a large number of projects in the City of Perth are vacant because the demand is not there. Maybe, as the Treasurer hopes, as the economy picks up more demand will come, but that seven per cent levy will affect them. I remember that for the Frasers project in East Perth—I cannot remember and I will not quote it—a very, very high percentage of the properties bought off the plan were for foreigners. Particularly in this depressed market, if that were put on now, that project would not go ahead.

**Mr B.S. WYATT:** There is already a limit on how much can be pre-sold to foreigners. I think it is 20 to 25 per cent. That is a FIRB-imposed limit and requirement. No doubt when developers go to their banks, the banks know that. The banks are fully aware of where they are likely to sell their apartments. Interestingly, we obviously took a foreign buyer surcharge to the election—the rate has changed, I accept—and the concept of a levy was very much in play. Since then I guess the best example—I know the member for South Perth has had a keen interest in it—is the progress on the Golden Group's Belmont Park development. They are all apartments; there may be some townhouses, but basically they are apartments. I suspect the Golden Group's ambition will be a significant foreign take-up of those. I make the point that that decision was made after the developer knew there would be a foreign surcharge in play in some form.

**Mr J.E. McGrath:** But if they are all over 10 —

**Mr B.S. WYATT:** Yes, but it is who they will be selling them to. With a 100-apartment complex being sold to foreign nationals, they still pay the surcharge.

**Mr J.E. McGrath:** But they can still only sell 25 per cent.

**Mr B.S. WYATT:** That is correct; yes. That is right. They can still only pre-sell 20 to 25 per cent.

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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**Dr M.D. NAHAN:** For that project, the major driver, I assure the Treasurer, was the beautiful stadium and the train station right across the road. That project has been on the boil for a while, and there is a long way to go. I wish them well. But the point is taken. A number of apartments have been announced, particularly at Elizabeth Quay and others, that will rely on foreigners. The ones in EQ are being very heavily advertised in Hong Kong. I do not think that is for expatriate Australians working in Hong Kong, although there might be a few. Some are very highly priced. I accept that a seven per cent levy for people buying an apartment for over \$2 million is a lot of money, but some of them will be insensitive to that. I accept that the driver is always capital gains, rather than transaction costs. One of the issues is that there will be some restrictions—they have to be residential properties—and some conditions about unintended use. Let us say someone buys a property. Sometimes people do not know what they are doing when they buy property and develop it. It might be designed as a multiuse property, and often the use is changed to business, particularly for the services area. My electorate has a large number of people who use houses for business that were built for residential purposes. It is not overwhelming. What will happen if a determination is made that someone is liable for the seven per cent, and then the use of it, and maybe the status of the person, changes—maybe they get married to a local? Which provisions in the bill will allow for a change of circumstances whilst buying a property?

**Mr B.S. WYATT:** If a person buys off the plan—they sign a contract—and is not an Australian citizen, but at the point of execution they have become an Australian citizen, that person will be exempt; they will not be captured by the surcharge.

**Dr M.D. Nahan:** If a person buys off the plan, it might take two years for the property to be built, and in that time they have become a citizen or permanent resident.

**Mr B.S. WYATT:** If at the point that it is executed and settlement takes place the person is an Australian citizen, it will not apply. The member also asked about the nature of the property. A person may have an intention to run a business out of a residential property, but it will be captured because it is a residential property.

**Dr M.D. NAHAN:** The Treasurer chose to increase the rate of duty from four per cent to seven per cent. Could the Treasurer explain, firstly, why he did that? Secondly, of the revenue collected, which will be around \$50 million, what will the four per cent and the three per cent be used for? I understand that the four per cent surcharge was targeted to fund TAFE. Is the revenue from the additional three per cent earmarked for any purposes? I am sure Treasury would argue against that, but I would like to get some clarity on it.

**Mr B.S. WYATT:** No, we have not announced a link to anything in particular. The shift from four per cent to seven per cent is, to be honest, probably my fault. As Treasurer, one enters into dialogue with other Treasurers on a range of different things. We try to be as uniform as possible, to be honest. Although the four per cent surcharge was linked to a particular election commitment, the increase to seven per cent was not.

**Mr W.R. MARMION:** I will again go along the theme of people trying to cook the system. Let us say that someone builds a block of 12 apartments, but to avoid paying duty, they have designed it in such a way that some of the units can be amalgamated in a couple of years' time when they feel like they want to do that.

**Mr B.S. Wyatt:** Knock a wall out?

**Mr W.R. MARMION:** Knock a couple of walls out—that sort of thing. It would be a bit more subtle than that; no-one would pick it up from the floor plan. I worked for a couple of years in the Office of the Auditor General.

**Mr B.S. Wyatt:** You have a devious mind, member for Nedlands.

**Mr W.R. MARMION:** Yes, I have. From experience, they will not be picked up. How they are usually picked up is that someone—possibly a former personal friend—will dob them in. This is what happens in life.

**Mr B.S. Wyatt:** Personal experience?

**Mr W.R. MARMION:** From having worked there and having had people dobbed in to me! After five years, a couple of walls might be knocked down. They were not very thick. Suddenly, there are only eight units. Does the Department of Finance have the ability to go into that, like the Australian Taxation Office would do, and recover any duty that might be payable?

**Mr B.S. WYATT:** No. I will make some comments around that. It is a big spend to do that. I will use the member's example. If a person builds 12 apartments, they will not be captured by the surcharge. If a wall is knocked out and two units becomes one, there would still be two certificates of title, unless the person is going to go through a planning scheme or approval process. I do not expect that to be a particular issue because, firstly, the spend is big and, effectively, it would create problems if the person wanted to on-sell. I imagine local governments would have a few things to say around issuing certificates of title or on strata plans—all the things that go with having a larger apartment complex.

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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**Mr W.R. MARMION:** I am thinking about the future and people wanting to possibly downsize, or of parents living in this situation. A person might have a one-bedroom apartment, and there is also a two-bedroom apartment with an ensuite for parents. There might be a market for it. They would have to do the sums; they might save \$500 000 in duty.

**Mr B.S. Wyatt:** But they are still having to build more to get there.

**Mr W.R. MARMION:** No, it has been set up. The one-bedroom apartment and the two-bedroom apartment next door become a three-bedroom apartment with an ensuite for the parents.

**Mr B.S. Wyatt:** It is still two certificates of title.

**Mr W.R. MARMION:** It would basically be amalgamating two titles into one title.

**Mr B.S. Wyatt:** That is where the effort is—in amalgamating the certificates of title.

**Mr W.R. MARMION:** Correct. What is the Treasurer's comment on that?

**Mr B.S. WYATT:** That is it. Ultimately, someone would need to spend a lot of money, time and effort to do this, including building the structure. It is a big spend. I suspect that the commercials would not work on it. I just cannot see how that would work.

**Mr W.R. Marmion:** You just have to build another door. It would not be very expensive. Then you would just close off the other door or make that a back door.

**Mr B.S. WYATT:** The member for Nedlands has a post-political career lined up, I suspect.

**Mr W.R. Marmion:** The point is that if that happened, is there a capacity to go in?

**Mr B.S. WYATT:** No; there is not that capacity to go in.

**Dr M.D. NAHAN:** Glenn Stevens was hired by the New South Wales government to put together a review of housing affordability packages. It was an assessment. The surcharge was increased from four per cent to eight per cent in Sydney—I assume it was across the state, but I do not know. That additional money was earmarked to fund a range of housing affordability initiatives that are outlined in his report. As the Treasurer knows, Sydney has a serious problem. I believe the same thing was done in Victoria, but I would need to confirm that—that is, it started at a lower rate and was increased—because Victoria also has a serious affordability problem. Can the minister confirm that about Victoria and New South Wales? Relative to those states, we do not have an affordability problem.

**Mr B.S. WYATT:** Victoria and New South Wales have been the problematic states of late around affordability. I am probably more familiar with the announcement of the Victorian package. The Victorian government had an affordability policy that pulled a range of levers that it had. New South Wales had a similar policy. I would have to go back. I have not seen that Stevens report. I am intrigued by that report and will have to have a look at it. Glenn Stevens is a significant person, so I would like to read that report. New South Wales also has an ongoing land tax obligation for foreign investors. Even though it is an eight per cent surcharge, there is an ongoing increase in their land tax liability as well. New South Wales has gone for a bigger grab, to be honest, than any other state. The Treasurers made the point to me that they were surprised by how much revenue the foreign buyer surcharge ended up bringing in for them, I guess because of what happened to their property markets. I would have to check, but I would not be surprised if the packages—certainly in Victoria, but I will check on New South Wales as well—were probably larger than just the revenue they were getting from the surcharge. I suspect they were larger spends than that, because the issue became particularly problematic in both those states.

**Dr M.D. NAHAN:** On another issue, Victoria and New South Wales put in a raft of similar policies, including vacant apartment levies. I cannot remember the details.

**Mr B.S. Wyatt:** They did—a vacant apartment levy.

**Dr M.D. NAHAN:** They measured it by the amount of electricity used and a range of crafty ideas, because there was a lot of buying, but people were not using the properties and the apartment complexes could not afford the upkeep and whatnot, so it was a real problem. Many of them were introduced to basically take the heat out of the market. Does the government have any intention of doing that?

**Mr B.S. WYATT:** No; I confirm we do not. It was an interesting policy announcement by Victoria. I am not sure how much extra they had to give to the Victorian State Revenue Office to implement it.

**Dr M.D. Nahan:** Not much.

**Mr B.S. WYATT:** It was not much. We have not looked at that. I have not asked for any work to be done on that. It is not something that I suspect anyone in WA will be looking at any time soon.

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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**Mr W.R. MARMION:** I have another scheme. I would like the minister's comment on a possible scheme whereby a company that has, let us say, 90 per cent Australian ownership and 10 per cent foreign ownership but is then owned by a holding company that has type A and type B shares. The capital is tied up in the type B shares and the type A shares run the company. In that respect, the foreign owner has all the type A shares, or the majority of them, so it looks as though the company, the purchaser of the property for all intents and purposes, is only 10 per cent Australian owned, but if we go through the type A shares in the holding company, it is discovered that the company is 90 per cent foreign owned. Is there a mechanism whereby the Department of Finance can go to the ultimate owner? I think the Australian Taxation Office can. If so, can the minister explain how that mechanism might work?

**Mr B.S. WYATT:** In the specific example the member gave, a company that has 90 per cent Australian ownership but is effectively controlled by the foreign company would be captured; Finance can and does do that. I will make some more comments about that.

**Mr W.R. Marmion:** It would be 90–10 and then 10–90.

**Mr B.S. WYATT:** It is not apportioned. I will give more information. A corporation is foreign if the corporation is incorporated outside Australia or if foreign persons hold 50 per cent or more of the issued shares in the corporation or are in a position to control 50 per cent or more of the voting power or potential voting power in the corporation, which I think deals with that.

**Dr M.D. NAHAN:** When I was Treasurer, I was lobbied very heavily by developers of large buildings. Maybe the minister can clarify whether duty on apartment developments in Melbourne and Sydney is treated significantly differently from duty on apartment developments here?

**Mr D.C. Nalder:** The initial duties.

**Dr M.D. NAHAN:** Yes; that is, the duties are on the basis of land only—maybe I am wrong—rather than the total value of the property. That means that for properties of similar values, even if the duty rates are identical on a property of—let us say, \$1 million—the initial purchasers of apartments pay a lot more aggregated duty than on an equivalent apartment in Melbourne. Could the minister confirm that and see how it interacts with the seven per cent surcharge?

**Mr B.S. WYATT:** I cannot absolutely rule out the Leader of the Opposition's question, but I want to get this right. For the developer buying the land, we do not think there is anything there, but there is not a concession for the buyer coming in. I cannot guarantee the point the member is making exactly, without specifically checking.

**Mr D.C. NALDER:** I come back to compliance. I understand that a foreign landholder must lodge a duty declaration and so forth. I understand and appreciate that ignorance is not an excuse for breaking the law, but I want to make sure that people understand. How will they know that they have to complete this form and whether the standard transfer forms specifically requests information about whether a person is or is not a foreign person? I want to close the loophole whereby penalties are applied, but at the same time people claim that they are not aware that they need to lodge a declaration as a foreign person. What process will be adopted when this is implemented to ensure that the appropriate checks and measures are in place to ensure compliance?

**Mr B.S. WYATT:** Again, that is a good question. All purchasers will have to make that declaration either at settlement, if it is done the old-school way, or online.

**Mr D.C. Nalder:** It'll be on the standard transfer?

**Mr B.S. WYATT:** Yes. It occurs at lodgement of the contract.

**Mr D.C. Nalder:** For every person?

**Mr B.S. WYATT:** It is everyone.

**Dr M.D. NAHAN:** I now go to proposed section 205O, "Rate of foreign transfer duty". The Labor Party went to the election on the basis of a four per cent levy, which was vigorously debated by all sides. Despite the Premier saying that there would be no new taxes, or the introduction of new taxes, that is the exemption it sought as part of its campaign. We disagreed with it then and we still disagree with not only the timing, which is atrocious—as we go through we will see the consequences of that—but also the principle. All that revenue was earmarked for certain expenditure for TAFE, and that has been locked into the government's budget. Now the government wants to increase the levy by three per cent to collect another \$50 million over four years on the basis of national uniformity. That is convenient for others, but in our market, for both international students and apartments, it is a different state of affairs. The increase of the levy from four to eight per cent in New South Wales was, according to the Glenn Stevens report, earmarked for programs to specifically address declining affordability. They are all

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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listed. Our view is that the government does not have a mandate and has not given adequate reason for going from four to seven per cent. Therefore, I move —

Page 14, line 11 — To delete “7%” and substitute —

4%

We totally disagree with this tax. We expressed our disagreement during the election campaign when the tax was set at four per cent. That is what the Labor Party promised. We do not think that the government has a mandate or has given us adequate reason for increasing the levy from four per cent to seven per cent. Our view is that it should change the amount to what it promised and what it committed to, and that is four per cent.

**Mr B.S. WYATT:** I understand the amendment. I do not have a copy of it but I get what it is—to reduce the proposed levy to four per cent. Ultimately, the controversy around this, which is why it was raised during the election campaign, is the policy principle. It is a new revenue source for Western Australia. We took four per cent to the election. My view is that the dispute was over the actual principle of taxing foreign investors purchasing residential property. I think the electorate made a decision around that. When the figure of four per cent was announced, we outlined that it was linked to specific policy announcements that we made at the time. The fundamental difference between New South Wales and Western Australia is that even with the levy set at this amount, we are still running a large operating deficit, and still expect to do so through to 2020–21. It has not been allocated, other than reducing the size of that operating deficit. That is where it is. We are still keen on seven per cent. I made the point earlier around generally uniform consistency across the commonwealth. New South Wales is different because its levy is eight per cent rather than seven per cent. It also has a land tax obligation, which makes it quite different from every other jurisdiction. Seven per cent brings it up to national consistency.

**Dr M.D. NAHAN:** Just to encapsulate, the reason for the amendment is that we disagree with the tax put forward and the concept for it. First, we disagree with the principle of it and the timing in particular. It is not the right time for this tax. Second, the government initially said that it would be set at four per cent, and it was earmarked. That is how the government justified it. The Treasurer said that the other states have levies of around seven per cent, and some are higher. New South Wales has earmarked in total its increase from four per cent to eight per cent for housing affordability problems. We do not have those problems. I do not think we need to raise money for that. Housing affordability in this state is rapidly improving, unfortunately for the owners of homes. The Labor Party did not seek a mandate for seven per cent. It is not earmarking this. To be honest, national uniformity does not make any sense to me, especially since we have a two-speed economy. Until recently, the housing market in the eastern states has been going gangbusters and New South Wales had to put on the brakes. Our situation is the complete opposite. Without foreign investment in property, it will remain that way for the foreseeable future. In a sense, we are holding the government to account but also recognising that it made a commitment of four per cent and it was an exemption from its blanket policy of ruling out additional taxes. I think it is fair and transparent to do that.

**Mr B.S. WYATT:** I suspect that if the levy were four per cent, the Liberals would still oppose it and probably move an amendment to reduce it to two per cent. That would be the nature of it. That is the debate we are having. Of course we will oppose this amendment.

**Mr V.A. CATANIA:** It really does seem that the reasoned amendment that we moved yesterday, saying that the National Party would support the Duties Amendment (Additional Duty for Foreign Persons) Bill 2018 as long as regional education cuts were reversed, seems pretty good. As I said, the National Party supports the bill but we moved an amendment yesterday to ensure that regional education cuts to Moora Residential College, camp schools, Landsdale Farm School and Herdsman Lake Wildlife Centre be restored, along with the 20 per cent raided from the agricultural education farms provision trust. Clearly, the Labor Party did not go to the election saying that it would cut regional education. It went to the election saying that it would impose a levy of four per cent on foreign investors. Now that figure is seven per cent. I think it is only fair and reasonable that the government keep its word and say that it should be four per cent. We are happy to take the seven per cent as long as the cuts relating to regional education are reversed; the Nationals would always be happy to support the seven per cent if that were the case. However, in this case, we will hold the government to its word. It said four per cent during the election and four per cent it should be. The Nationals will support the amendment moved by the Leader of the Opposition.

*Division*

Amendment put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

**Extract from Hansard**  
[ASSEMBLY — Thursday, 16 August 2018]  
p4759b-4781a

Mr Paul Papalia; Mr Ben Wyatt; Dr Mike Nahan; Mr Dean Nalder; Mr Bill Marmion; Mr Peter Katsambanis; Mr Vincent Catania; Acting Speaker

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Ayes (14)

Mr V.A. Catania  
Ms M.J. Davies  
Mrs L.M. Harvey  
Mrs A.K. Hayden

Dr D.J. Honey  
Mr P. Katsambanis  
Mr Z.R.F. Kirkup  
Mr A. Krsticevic

Mr S.K. L'Estrange  
Mr W.R. Marmion  
Mr J.E. McGrath  
Dr M.D. Nahan

Mr D.C. Nalder  
Ms L. Mettam (Teller)

Noes (35)

Ms L.L. Baker  
Dr A.D. Buti  
Mr J.N. Carey  
Mr R.H. Cook  
Ms J. Farrer  
Mr M.J. Folkard  
Ms J.M. Freeman  
Ms E. Hamilton  
Mr T.J. Healy

Mr M. Hughes  
Mr W.J. Johnston  
Mr D.J. Kelly  
Mr F.M. Logan  
Mr M. McGowan  
Ms S.F. McGurk  
Mr S.A. Millman  
Mr Y. Mubarakai  
Mr M.P. Murray

Mrs L.M. O'Malley  
Mr P. Papalia  
Mr S.J. Price  
Mr D.T. Punch  
Mr J.R. Quigley  
Ms M.M. Quirk  
Mrs M.H. Roberts  
Ms C.M. Rowe  
Ms A. Sanderson

Ms J.J. Shaw  
Mrs J.M.C. Stojkovski  
Mr C.J. Tallentire  
Mr D.A. Templeman  
Mr R.R. Whitby  
Ms S.E. Winton  
Mr B.S. Wyatt  
Mr D.R. Michael (Teller)

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Pairs

Mr R.S. Love  
Mr K. O'Donnell  
Mr D.T. Redman  
Mr I.C. Blayney

Mr P.C. Tinley  
Ms R. Saffioti  
Mrs R.M.J. Clarke  
Mr K.J.J. Michel

**Amendment thus negated.**

**The ACTING SPEAKER (Ms J.M. Freeman):** I call the member for Armadale for the first time for unparliamentary dress. I note that other members have been kicked out on previous occasions.

Debate interrupted, pursuant to standing orders.

[Continued on page 4803.]