

DUTIES AMENDMENT BILL 2011

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Finance)**, read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [10.21 pm]: I move —

That the bill be now read a second time.

This bill amends the Duties Act 2008 to address concerns arising from a stamp duty decision of the High Court of Australia on 15 December 2010. The case concerned the assessment of stamp duty under the Stamp Act 1921 that involved, among other things, items affixed to land that was subject to a mining tenement. Although the Stamp Act has been replaced by the Duties Act, it is nonetheless desirable that certain consequences of the decision be addressed to ensure the state's duty base is not adversely affected. The High Court judgement resulted in a departure from the previous understanding of mining tenements in relation to their status as an interest in land and the nature of items attached to them. The High Court held that mining tenements are not interests in land, but rather are personal property, involving a grant of rights for mining purposes. As a consequence, the High Court also determined that items affixed to land that is the subject of a mining tenement are not fixtures in the technical legal sense and therefore cannot be assessed under the Stamp Act as an interest in land.

Unlike the Stamp Act, the Duties Act imposes duties on transactions involving land by reference to a definition of land that includes any estate or interest in land, a mining tenement and anything that is part of land as a fixture. Although the Duties Act already makes it clear that a mining tenement is land for Duties Act purposes, amendments are considered necessary to clarify the definition of land in relation to any estate or interest in a mining tenement, including, for example, a sublease or sub-licence of a mining tenement or an equitable interest, and to specify what constitutes a fixture in relation to petroleum licences, mining tenements and any interest or estate in mining tenements. This bill seeks to ensure that items attached to a mining tenement, or any estate or interest in a mining tenement, are regarded as fixtures in the same circumstances that would apply if the mining tenement were a freehold interest in land. This will result in the same tests, such as the degree of annexation and intention of the parties who place an item on a mining tenement, being applied to determine whether the item is a fixture for duty purposes. Fixtures attached to land the subject of petroleum licences are also included by including the reference to a pipeline under the Petroleum Pipelines Act 1969 in the definition of land. The amendments are proposed to commence from 24 December 2010, the day after an announcement was made that the government would be legislating to address the issues raised by the High Court decision. The amendments are consistent with the government's announcement on this matter.

I commend the bill to the house and table the associated explanatory memorandum.

[See paper 3610.]

Debate adjourned, pursuant to standing orders.