



PARLIAMENT OF VICTORIA

Legislative Council

Economy and Infrastructure Committee

Inquiry into the State Taxation Acts Amendment Bill 2015

June 2015

Report No. 1, 58th Parliament



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Chair's Foreword

On behalf of the Economy and Infrastructure Committee, I present the first report of the Legal and Social Issues Committee for the 58th Parliament.

This was a ground breaking Inquiry, in that it is the first time a Council Committee has reviewed a Bill before its introduction into the Legislative Council. This allowed the Committee to review this Bill without delaying its passage through the Council.

In undertaking this brief but important Inquiry, the Committee received evidence from key witness about how investors may react to this proposal. The evidence given to the Committee suggests that the actual impact may not be known for several years given the lead times involved in property investment.

Concerns were raised in hearings about the ability of the Treasurer to grant an exemption from the stamp duty surcharge and the transparency of that process. However the Committee was also advised that these types of exemptions are not unusual as there are similar provisions in other Acts.

Witnesses suggested that fast tracking exemption applications would assist developers plan developments with certainty. The Committee also heard that given these provisions will be administered by the State Revenue Office (SRO), if the provisions pass the Government may need to review the SRO's operations and staffing.

I would like to thank the my colleagues on the Committee, Mr Khalil Eideh, Mr Philip Dalidakis, Mr Nazir Elasmr, Ms Colleen Hartland, Mr Bernie Finn, Dr Rachel Carling-Jenkins and Mr Craig Ondarchie for their work on the Inquiry. On behalf of the Committee I thank all the witnesses for their time and evidence. Finally the Committee's thanks also go to the staff for their work and in particular Mr Anthony Walsh, who undertook the research and managed the Inquiry from the outset and enabled the Committee to meet its tight deadline.

I commend this Report to the House.



JOSHUA MORRIS
Chair

1

Inquiry process

The State Taxation Acts Amendment Bill 2015 is a technical Bill that does four things:

- it proposes a new land transfer duty surcharge on foreign purchases of residential real estate
- it introduces a land tax surcharge on absentee landowners
- it introduces a motor vehicle duty exemption for vehicles classified as mobile plant or plant based special purpose vehicles
- it makes a number of small changes to landholder duty legislative provisions

The Committee's Inquiry focused on how the first two provisions would impact on housing supply and affordability in Victoria.

The Terms of Reference meant that this was an inquiry into how the operation of a state taxation bill may impact on housing supply and affordability in Victoria. Given the timeframe of the Inquiry it was not intended or possible to be an inquiry into housing affordability. The Committee notes that the Senate Standing Committee on Economics has undertaken a thorough investigation into this issue over a considerable timeframe.

The Inquiry into this Bill commenced before it had been introduced into the Council. This allowed the Committee extra time to review the legislation, which was important given on this occasion the Bill has a commencement date of 1 July 2015. This meant the Committee was able to undertake this Inquiry without delaying the consideration of the Bill by the Council.

The Committee conducted one day of hearings on 15 June 2015 with six key stakeholders¹ (see full list in section 5). The Committee is grateful to the witnesses for the time and evidence they gave at the hearings.

This Report provides a summary of the main issues raised at the hearings. Full copies of the transcripts are attached to this Report.

¹ The Real Estate Institute of Victoria declined the Committee's invitation to participate in a hearing, and a session scheduled with Mirvac was cancelled after they advised the Committee on the day of the hearings that they were unable to attend.

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Referral of the Bill

On 27 May 2015, the Economy and Infrastructure Committee resolved to:

Undertake an Inquiry into the State Taxation Acts Amendment Bill 2015, and that the Committee report its findings and recommendations to the Legislative Council by 23 June 2015 and that the Inquiry in particular examines the likely effect of the Bill on housing supply and housing affordability.

On 28 May 2015, the President advised the Council that the Committee was undertaking the above Inquiry. As discussed above the Bill had not been introduced into the Council at this stage, however, it was introduced and its second reading commenced later that day.

3 Provisions of the Bill

This Bill amends several Acts. In summary it:

- introduces a 3 percent stamp duty surcharge on foreign purchasers and a 0.5 percent land tax surcharge on absentee land owners –
 - this applies to both individuals and corporations
 - absentee land owners are individuals who –
 - do not ordinarily reside in Australia
 - are not Australian citizens or residents
 - were absent from Australia for a total period of at least 6 months in the preceding financial year
- exempts small business from registration or transfer on special purpose vehicles –
 - this applies to vehicles such as backhoes, excavators, bulldozers, headers, scrapers and tractors
- ensures individuals eligible for concessional landholder duty can access this, while requiring that private companies pay this duty
- allows for a tax refund to be offset against an existing debt or First Home Owner Grant liability
- corrects some incorrect references in other Acts

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On 28 May 2015, the President advised the Council that the Committee was undertaking the above Inquiry. At this stage the Bill had not been introduced into the Council, but it was introduced and its second reading commenced later that day.

4 Evidence received

4.1 Objective of the surcharge

Foreign investors do not pay local taxes (such as GST or income tax) over an extended period of time. These taxes are used by governments to provide services (such as parks, public transport, schools, etc) which can affect the value of a property. Witnesses from the Department of Treasury and Finance indicated that the purpose of the proposed surcharge was to ensure that foreign buyers contributed to the provision of government services.

4.2 Impact on investment

The Committee received evidence that foreign investors can only purchase new property, and not existing housing stock. There is a discount offered to buyers who purchase “off the plan”. This discount is not available in other States, and it may be that the discount offsets the proposed additional charges. If this were to increase the cost to foreign investors these investments may be directed interstate where the costs are less. Witnesses from the Department of Treasury and Finance highlighted that:

In general our judgement would be that we do not anticipate a really significant demand response pursuant to this 3 per cent impost. As we noted earlier, the level of activity or the level of demand from foreign investors is sufficiently variable and has grown by such a strong amount in recent times due to factors completely obviously unrelated to price. That kind of puts in perspective, I guess, what level of response you might see from a 3 per cent surcharge, which we would anticipate would be reasonably small.²

Witnesses were unable to advise how this surcharge would impact on foreign investment and the supply or affordability of housing in Victoria. Pitcher Partners, suggested that if this proposal were implemented the impacts may not be realised for several years.

I do not think our clients know the answer to that question yet. We will probably know the answer to that in two, three, four, five years time. If we have another hearing, perhaps we can answer that question then, but at the moment I think that is one of the uncertainties. What it does do, though, is it gives those investors the opportunity to look elsewhere. Where they may have been focused, as Andrew said, on Melbourne for a number of other different reasons, they may now have the

2 Michael Brennan, Department of Treasury and Finance, Transcripts of Evidence, p 20.

cause and opportunity to say, 'Well, hang on a minute, if Melbourne, Victoria, is going to charge me an extra \$15 000 of stamp duty, should I in fact look at Sydney or somewhere else?'.³

4.3 Impact on housing prices

Although housing prices are determined by the market, the Committee looked at whether an additional charge on investors would lead to an increase in housing prices. The Property Council of Australia noted:

The market will determine what price will be paid. That would just depend on how many properties are on the market at that time and where is that property located, I would imagine.⁴

They also noted that foreign investors can only sell to domestic buyers, which may limit the buyer interest in a property and may, therefore, have a downward pressure of pricing, thus improving affordability.

4.4 Exemption from surcharge

The Bill gives the Treasurer discretion to issue an exemption from the surcharge. This is essentially to ensure that the end user pays the surcharge and not developers or companies who may have foreign backing who may have purchased land to develop and resell.

The State Revenue Office noted that the Treasurer is required to act in accordance with the legislation, and guidelines have developed to regulate the use of the exemptions.

The exemption is actually provided under the legislation. The guidelines are mere explanatory materials that extrapolate a bit further in terms of what the exemption in the bill provides. Just like the State Revenue Office issues many public rulings, guidance notes, bulletins and website information that explains obviously complex legislation to help and assist taxpayers in understanding those requirements, these guidelines that the Treasurer has issued have that same intent ...⁵

Some witnesses expressed concerns over the use of this provision given the lack of transparency. When an exemption is issued there is no requirement that the Treasurer report either to Parliament or publically. However, the Department advised that there are a number of provisions in different Acts which give the Treasurer a similar discretion and he is not required to report on these.

Generally in state tax legislation we are prohibited from naming who is the benefit of an exemption or, alternatively, who has been taxed at a certain rate. Anybody that is delegated to administer state tax legislation is prohibited in

³ Craig Whatman, Pitcher Partners, Transcript of Evidence, p 43.

⁴ Jennifer Cunich, Property Council of Australia (Victorian Division), Transcripts of Evidence, p 28.

⁵ Vasko Nastevski, State Revenue Office, Transcripts of Evidence, p 14.

that sense through various privacy and secrecy provisions; for example, I, myself, could not do that. Coming back to this particular exemption, there is no requirement for this exemption for the Treasurer or the commissioner to report on who is the benefit of it. But, as I said earlier on, that is no different to any other exemption or concession.⁶

While some witnesses indicated they would be comfortable to have exemptions reported publically, others expressed reservations.

The other concern raised in relation to the exemptions related to the potential delays and costs for investors to obtain one. The State Revenue Office would be responsible for administering applications for exemptions. It was suggested to the Committee at present some applications are taking six to 12 months to get approval from the State Revenue Office. Were a similar timeframe to occur for these exemptions it may deter foreign investment in property in Victoria. Pitcher Partners highlighted this point:

The SRO has responsibility for administering a number of parts of the stamp duty legislation as well as the land tax legislation. In some cases applications for certain things can take a significant amount of time. As I said, I think it is a question of resourcing. I am not having a go at the SRO here. They only have a limited number of staff and therefore a limited capacity to turn things around. Unfortunately, sometimes that does not line up well enough with the commerciality of the transaction and the timing issues that our clients face.⁷

6 Vasko Nastevski, State Revenue Office, Transcripts of Evidence, p 15.

7 Craig Whatman, Pitcher Partners, Transcript of Evidence, p 39.

5

Schedule of Public Hearings

Monday 15 June 2015

Law Institute of Victoria

Rob Parker, Chair, State Taxes Committee

Department of Treasury and Finance

Michael Brennan, Deputy Secretary, Economic

Trudy Hart, Director Tax and Intergovernmental Relations

State Revenue Office

Vasko Nasteovski, Manager, Legislation, Policy and Legislation Branch

Property Council of Australia (Victorian Division)

Jennifer Cunich, Executive Director, Property Council of Australia

Nick Proud, Executive Director, Residential Development Council

Tom Cantwell, Partner, Property, Mill Oakley Lawyers

Rob Pradolin, General Manager, Business Development, Australand

Urban Development Institute of Australia

John Casey, Policy Advisor

Peter Vlitias, Board Member and Treasurer

Pitcher Partners

Craig Whatman, Partner, Taxation

Andrew Clugston, Partner, Business Advisory and Assurance

Appendix 1

Transcripts of evidence

CORRECTED VERSION ONLY

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Subcommittee

Inquiry into the State Taxation Acts Amendment Bill 2015

Melbourne — 15 June 2015

Members

Mr Joshua Morris — Chair

Mr Philip Dalidakis

Mr Khalil Eideh

Mr Nazih Elasmr

Ms Colleen Hartland

Staff

Secretary: Mr Michael Baker

Research officer: Mr Anthony Walsh

Witness

Mr Rob Parker, chair, state taxes committee, Law Institute of Victoria.

The CHAIR — I declare open the Legislative Council economy and infrastructure committee public hearing. This hearing is in relation to the inquiry into the State Taxation Acts Amendment Bill, and I welcome Rob Parker from the Law Institute of Victoria. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and is further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for which you say here today, but if you go outside and repeat the same thing, those comments may not be protected by this privilege. All evidence is being recorded, and you will be provided with proof versions of the transcript in the next couple of days.

We have allowed 45 minutes for this session. To ensure there is sufficient time for questions, the committee asks you to make some opening comments, to be kept at around 10 minutes or so. Finally, I remind you that this inquiry is only obtaining evidence in relation to how the measures in this bill would impact on housing affordability and housing supply in Victoria, so please consider your evidence to ensure it addresses these committee's terms of reference.

Mr Parker, I might just go through and introduce the committee. I am Joshua Morris, the chair of the committee. We have Mr Eideh, who is the deputy chair of the committee, Ms Hartland and Mr Dalidakis. This is a subcommittee of the committee. Obviously we are not all present today but we do have a subcommittee present for the hearing today. Welcome, Mr Parker, and I will throw to you.

Mr PARKER — First of all, apologies. Lily — I have forgotten her surname now —

Ms HARTLAND — Lily Tell.

Mr PARKER — yes, from the property and environment committee, was scheduled to appear, but she is not available today. Apologies for that, first of all. Obviously the law institute is fairly limited in the degree to which it can comment on economic issues. You will have received the law institute submission, I believe.

The CHAIR — Yes.

Mr PARKER — We have a number of concerns about it. One is the lack of prior consultation and the fact that the bill will become effective from 1 July in relation to the Duties Act and effectively on 31 December in relation to the 2016 land tax year, so it gives people very little opportunity to make adjustments and identify transactions that may be susceptible to the new imposition.

In terms of affordability of housing, I can only say that anecdotally I have heard that people are suggesting that they may purchase interstate — in Sydney in particular — as opposed to in Victoria. In terms of off-the-plan apartments, there is a balancing act there because in Victoria you get a concession for purchasing an apartment off the plan. You do not in New South Wales. As to whether the net effect of the added 3 per cent on the purchase of an off-the-plan apartment is going to outweigh the benefit of the off-the-plan concession, it is fairly much a balancing act, but I will give some examples. At the lower end of the scale it adds a significant amount of duty. The explanatory memorandum gives an example of a contract to buy an off-the-plan apartment for \$500 000, with concession bringing it down to \$300 000 after you take away the building costs. So you pay normal duty on \$300 000 plus you pay 3 per cent on the top-up. It adds about \$10 000 to the cost of an off-the-plan apartment compared to what you would pay in New South Wales. But, as I said, it is a balancing between the different components.

I will give another example. If you bought a \$2.5 million off-the-plan apartment, the difference becomes much more marginal because the value of the concession in Victoria begins to outweigh the additional 3 per cent. But obviously 3 per cent duty on the purchase of residential premises, new or otherwise, is going to be significant. The breadth of the new provisions is quite broad — corporations that are effectively foreign controlled. That includes Australian subsidiaries of foreign companies. And, in addition, trusts where there is a significant or substantial interest held by foreign corporations or foreign natural persons. So they are going to be fairly significant. They are probably much more far-reaching than what would appear on the surface.

Equally, the land tax provisions are also far-reaching, particularly with discretionary trusts, where you have got anybody who is a foreign object named in a trust deed or otherwise identified as a beneficiary of a trust. With the land tax, there is no transition, so it will apply equally to people who have existing properties that are held in the names of discretionary trusts. They will not have an opportunity to consider whether they will become subject to the provisions or not; they will just automatically become subject to them on 31 December. There is

no transition for people who have purchased properties — maybe 10, maybe 20, maybe 50 years ago — if they are in the name of a discretionary trust.

If the named beneficiary is a resident overseas — if they are non-citizens — then they will be potentially subject to those rules. We have had situations where, for instance, one of the partners I work with, her family discretionary trust includes her parents, who are Europeans and do not reside in Australia. Potentially anything in the named objects of that discretionary trust is subject to the new rules, even though the objects are not likely to benefit. The immediate objects are the partner concerned plus her immediate family, but because her parents are named as objects, then it potentially applies.

Ms HARTLAND — Sorry, could I just get you to explain that a bit more? So her parents live in Australia — —

Mr PARKER — No, her parents are European; they are not Australian citizens or residents.

Ms HARTLAND — But have lived in Australia?

Mr PARKER — No.

Ms HARTLAND — Right, okay.

Mr PARKER — Not as far as I am aware. The partner concerned is an Australian resident and Australian citizen, but because her parentage is from Europe her parents are named as beneficiaries of the family trust. The trust is in favour of her, her partner, children, but it also names her parents, so she is potentially subject to the new rules.

The CHAIR — Any further in your statement to begin, Mr Parker?

Mr PARKER — The only other thing we would like to point out is that there are some policy guidelines that the Treasurer has published on the State Revenue Office website, which I am sure you are aware of. Those guidelines are extremely broad and the discretions in the legislation are extremely broad — the Treasurer can consider a number of relevant factors which are enumerated but then any other circumstance. The content in those policy statements makes reference to contribution to housing stock in Victoria. That is something that is actually not mentioned in the legislation — it might be another relevant factor but it is not something that is specifically mentioned in the legislation. It leaves it open for the Treasurer to determine at a later stage that some other factor might be relevant, whether it might be housing stock or might be something totally different. There is the possibility of things just changing at the Treasurer's discretion or according to a change of Treasurer or a change of government.

The CHAIR — Thank you, Mr Parker. We might move onto questions, and I might begin with a question. In regard to those guidelines that you were speaking of earlier, can you give us some commentary around the legal status of those guidelines in your view as a result of them being published on the SRO website?

Mr PARKER — They probably do not have any legal status. Typically if the commissioner was vested with a discretion, the commissioner would exercise it in accordance with the administrative law guidelines and also in accordance with the requirements of the Taxation Administration Act. The Treasurer is not subject to any of those provisions, so if the commissioner publishes guidelines, then as a matter of administrative law he is bound to consider them, but it would seem that the Treasurer would not be subject to the same sort of restrictions. The guidelines would not have any legal status at all.

The CHAIR — So in terms of those guidelines, whether they may be tabled in Parliament or placed on the SRO website, that is not going to affect the legal status of those particular guidelines?

Mr PARKER — It might have some political status, but it would not have any legal status.

The CHAIR — Okay, very good.

Mr PARKER — The Treasurer could not be estopped from going back on whatever was published.

The CHAIR — Now, I also note in the law institute submission there are some issues raised about the doctrine of separation of powers and the rule of law in terms of the implementation of these laws. I am just hoping you could give some further comments on the issues that were raised there.

Mr PARKER — Yes, certainly. It is very topical given it was Magna Carta Day yesterday. As you will appreciate, the separation of powers, which derives from the Magna Carta, is basically that power of taxation is vested in Parliament and not in the executive. It is certainly the case that the Parliament can delegate powers. It cannot delegate the legislative power-making function itself. So whilst it is possible for Parliament to give discretion to the executive or to officials, given the breadth of the discretion in this case it is almost a case of we are delegating the whole function to the Treasurer to determine who might be subject to the new taxes and who might not be.

The CHAIR — To follow on from there, the concerns around transparency about who it is that may be exempt from these new taxes, does the law institute have a particular view around the transparency of who is going to be exempted from these particular taxes?

Mr PARKER — No, we do not, and that is one of the issues. It is going to largely be a matter of case-by-case analysis. I know the property council has had consultations with the parliamentary committee, so at the big end of town people like Stockland and Australand can probably get some certainty. But when you come down to smaller operators, it is going to be a case of making an individual application in each case or else just wearing the additional imposition. I do not know how the Treasurer would entertain applications by small-scale developers or individuals who are just buying a single property. I would imagine it is unlikely that the Treasurer is going to consider them in any sort of detail.

The CHAIR — In terms of transparency around those who are exempted, does the law institute have a view on whether or not those who are exempted whether or not that should be made public, in terms of which organisations have been exempted from these taxes and do not need to pay them?

Mr PARKER — We have not actually addressed that point. Personally I would have thought that there was an issue about confidentiality if they were published, but I could not put a point of view on behalf of the law institute; we have not actually discussed that issue.

Mr EIDEH — In these proposed changes, what do you think of the suggestion that they may encourage foreign and domestic investors to go to other states, and what is the impact in your view of these new proposals?

Mr PARKER — It is hard to say what the net impact would be; you would need to do some financial modelling. But, for instance, for the Chinese investors who are buying a lot of the off-the-plan apartments at the moment I think the east coast of Australia is probably just one generic destination, whether it is Melbourne or Sydney. I think they are in direct competition. Therefore it is just a matter of weighing up the additional cost in Victoria compared to doing business in New South Wales.

Mr EIDEH — They prefer to invest in the same in Victoria. Are you saying it is because they like Victoria or is it that maybe they are interested just in itself for investment?

Mr PARKER — Obviously it varies, but I would suggest a large proportion are just investing in Australia — in the east coast of Australia, whether it is Melbourne, Sydney or even Brisbane.

Mr EIDEH — So you think this may change the equation with regard to other states.

Mr PARKER — I think it is certainly a possibility, and, as I have said, I have had anecdotal evidence that people will just look to Sydney as opposed to Melbourne.

Ms HARTLAND — A couple of things that were in your submission, particularly around lack of consultation. Having been in the Parliament now for eight years, I have not seen either government do consultation very well. What would you think would have needed to have happened with this bill, because as you say there is a wide group of people that should have been consulted with?

Mr PARKER — Obviously, being a budget measure, you cannot consult prior to the budget. Also, given the tight time frame, there was a limited period of consultation, but in the past the law institute has been given confidential drafts of legislation in the drafting process to comment on. Now that might be in a tight time frame

but usually we can manage it, so we can identify drafting issues as they arise rather than have something appear in Parliament and then try and point out issues that might need attention whilst it is in Parliament. I think the key is to be able to consult at the drafting stage rather than the parliamentary committee stage.

Mr DALIDAKIS — Thank you for joining us today, Mr Parker. I just have a couple of questions just from the back end of what you have said, and then I will get back to the beginning of your testimony. Correct me if I am wrong, but as a legal professional, when you prepare — are you a barrister or solicitor?

Mr PARKER — I am a solicitor.

Mr DALIDAKIS — A solicitor. So when you prepare — when I went through my commercial law at university, you were always required to use case law to back up what you say. So, I am very interested in your desire to use anecdotal data, which cannot be quantified. I find it a somewhat flippant comment, so I am just wondering about your use of anecdotal information as opposed or distinct from more hard facts.

Mr PARKER — Well, obviously it is only a proposed law at the moment, so there are no hard facts. I only offer the anecdotal evidence for the purpose of assisting the committee; I cannot back it up. Until the thing is implemented it is hard to say exactly what its net effect would be.

Mr DALIDAKIS — I am trying to work out the reasoning for the law institute's presentation today. Is it because you are aggrieved that you were not consulted in the early stages of the drafting of the legislation and the preparation of the policy, or is it because there is actually an issue here that you feel strongly about?

Mr PARKER — Well, I am here today because we were invited. We made the submission on the basis of probably two different concerns: one is the initial lack of consultation, and the second is to do with a couple of technical issues to do with the bill. One is the rule of law issue, and the second is, as I said, the transitional issues with land tax where it applies equally to properties that have been owned for a number of years.

Mr DALIDAKIS — In terms of the transitional issues, let us jump to that straightaway. You are aware that of course whilst 1 July is the date that it comes in, the properties do not need to have been settled by that date. That has been made very clear in the process.

Mr PARKER — Yes, I am aware of that.

Mr DALIDAKIS — If you enter into the contract in good faith off the plan, which was one of the issues that you raised in your testimony, that in fact is no longer an issue because of course it does not matter when it settles as long as that contract has been entered into by 30 June.

Mr PARKER — That is what has been stated. I am not sure that that is what the legislation says, but that was not the point that I was making. I was referring more to land tax imposition, which applies to properties owned as at 31 December but it applies to existing housing stock as well.

Mr DALIDAKIS — Can you point me towards the Law Institute of Victoria's desire to have an impact on stamp duty as opposed to legislation?

Mr PARKER — Sorry, I am not sure I understand the question.

Mr DALIDAKIS — If you are concerned about the revenue growth of the state government in relation to stamp duty, where is the remit of the Law Institute of Victoria to comment on revenue issues for the state? I am just curious as to find the understanding behind your motivation.

Mr PARKER — In relation to the changes to the Duties Act, our submission and our concern is not on the quantum of revenue raised; it is on the manner of raising the revenue.

Mr DALIDAKIS — Okay, but it is still a revenue issue; it is not an issue of law, is the point that I am making. You can agree or disagree with that, but that is the point that I am making: that you are commenting on an issue of revenue raising, not an issue of legislation or legal precedent.

Mr PARKER — No, we are commenting on a legislative process.

Mr DALIDAKIS — That is not what I inferred. I could get Hansard to read back your testimony, but it will not add at this point. There are a range of other examples in taxation law where the Treasurer is able to make discretions. Are you aware of all of them?

Mr PARKER — Yes, I agree with that.

Mr DALIDAKIS — Okay, so are you questioning the validity of the Treasurer to be able to make those types of discretionary — —

Mr PARKER — No. As I said before, it is accepted that the Parliament can delegate functions to treasurers or to public servants for that matter — to the commissioner. It is a question of what is being delegated, whether it is a delegation of the function or whether it is a delegation of the legislative power itself.

Mr DALIDAKIS — Sure, but I note in your submission that you would make a preference, if I may, to suggest that you would be more comfortable if it was the commissioner of the SRO, for example.

Mr PARKER — Yes.

Mr DALIDAKIS — I am keen to try and tease out why you have more confidence in the commissioner rather than the Treasurer to be able to provide that kind of discretion.

Mr PARKER — It is nothing personal about the Treasurer or the commissioner. It is simply that the commissioner is subject to the requirements of the Taxation Administration Act, the commissioner is a public official, whereas the Treasurer is an elected official that is not subject to any sort of administrative review and not subject to the taxation admin act. If the commissioner was exercising the function, then it would be a function that was exercised subject to the taxation admin act.

Mr DALIDAKIS — But the commissioner is responsible to the Parliament and the Treasurer in particular. Again, I am trying to work out — if the Treasurer is responsible to the Parliament, then I fail to see a differentiation at this point as to whether it is the Treasurer or the commissioner of the SRO.

Mr PARKER — The Treasurer is responsible to the Parliament; the commissioner is responsible to the Parliament and to the courts.

Mr DALIDAKIS — I would in fact add that the Treasurer is responsible to the people of Victoria every four years as well. Moving along, you raised the issue of affordability. You implied — and feel free to correct me if you think my summary of your contribution is incorrect — that affordability of housing is at risk as a result of this. Is that an overstatement?

Mr PARKER — No, I did not raise affordability so much as just comparability between Victoria and other housing markets.

Mr DALIDAKIS — But this applies only to non-residents.

Mr PARKER — Yes.

Mr DALIDAKIS — So in fact the great percentage of purchasers of property are in fact either residents or in fact citizens, so we are talking about a very small proportion of either the population or in fact of the purchasers. Is that a fair assessment? Is that a fair summary?

Mr PARKER — Yes, I would agree with that.

Mr DALIDAKIS — So in which case, if we are talking about possible affordability or competitiveness, as you put it, were you aware that there was an NAB property study that showed that in fact interest from non-residents has grown from 5 per cent in 2011 to, I think it is, about 20 per cent recently?

Mr PARKER — I am aware of the study; I am not familiar with it.

Mr DALIDAKIS — So in fact if we were to talk about issues of affordability, that significant growth in the non-resident component of the market is actually probably driving up the affordability of the housing sector greater than anything else. Is that a possibility?

Mr PARKER — That might be right, but I do not think the law institute is in a position to comment on that.

Mr DALIDAKIS — Are you also aware that over the weekend a study was released by News Ltd showing that in fact Melbourne is the best place to live, work and raise a family in Australia? Are you aware of that?

Mr PARKER — I am not familiar with that one, no.

Mr DALIDAKIS — In which case, Melbourne and Victoria, ipso facto given that the legislation applies to the breadth and depth of this state, if the legislation has its intended consequences of applying only to non-residents, then by virtue of the fact that Melbourne and Victoria have a great deal to offer, there is a range of competitive issues within the marketplace to offset whatever the costs are for the purchaser vis-a-vis the benefits of purchasing here. Do you agree with that statement?

Mr PARKER — That may well be so. I am just commenting on the comparative costs of duty compared to, in this instance, New South Wales.

Mr DALIDAKIS — If we again go back to the issue of the non-resident element of the market being a relatively modest component of the overall subset of the market, would you also then agree that the issue of competitiveness with other jurisdictions across Australia is a small issue, not a large issue, in the overall scheme of the legislation before us?

Mr PARKER — I probably could not comment on that because I do not know the respective figures, and it would be speculation as to the net effect of the duty anyway because it may be that people buy in Victoria for totally — —

Mr DALIDAKIS — For different reasons?

Mr PARKER — For lifestyle reasons, for other reasons.

Mr DALIDAKIS — I concur with your answer, and I would respectfully put to you that if that is the case, then it is probably not wise to speculate that it would be an issue in relation to the legislation if you are unaware of the potential impacts within the state of Victoria. Is that fair?

Mr PARKER — I can only state that the imposition of duty in Victoria will be higher.

Mr DALIDAKIS — Sure, but you raised it as a potential issue but you are not aware of what the totality of that issue would be. Is that also correct?

Mr PARKER — No. As I said at the outset, we are not in a position to determine the economic impact of the additional duty.

Mr DALIDAKIS — So we can safely agree that you have not done any economic analysis of what that cost impact will be?

Mr PARKER — No, we have not done any economic analysis.

Mr DALIDAKIS — I appreciate your time, Mr Parker.

The CHAIR — We do have a little bit more time, so if we have got further questions, we might run through. I did just have one more if that is okay, Mr Parker?

Mr PARKER — Yes, sure.

The CHAIR — I wanted to quote from the submission, which says, under ‘Rule of law concerns’, in the final sentence in the second paragraph:

On this point, we note that the discretion is vested in the Treasurer, rather than the commissioner of state revenue.

Furthermore, the exercise of the power lacks transparency. The Treasurer’s decision is made ‘in writing’. There is no need to make a legislative instrument or to lay before Parliament the written decision that a person has been exempted from the taxation obligation. There is therefore no opportunity for Parliament to oversee the Treasurer’s decisions.

In terms of that and just to sort of flesh out the lack of transparency that is raised there, I am just contemplating who is involved in these particular decisions. We have a Treasurer, whomever it might be, and we have property developers of some description. I think probably in the view of many of the public politicians and property developers are sometimes viewed with a little bit of a question — whether it be right or wrong, but there is often that perception there in the community. So I am just wondering about what you may foresee as issues that result out of that lack of transparency between which exemptions may be made and to whom.

Mr PARKER — Well, yes, there is certainly an issue of transparency there. As I said, on one hand if the Treasurer publishes details of all the exemptions given, then there is an issue of privacy. On the other hand, if the Treasurer does not, then there is an issue of transparency and why exemptions may have been granted to one person rather than another. Whilst the Treasurer may be responsible back to Parliament and may report back to Parliament, there is nothing in the legislation requiring that.

Ms HARTLAND — Thank you very much for the submission. I found it extraordinary helpful, as I always do with the law institute's work, so I really appreciate that. This is a very technical bill obviously, so I was not actually expecting you to be able to come along and have detailed economic analysis to present to us. But are there other things that you think we should be looking at in the bill, things that might make it clearer, because I think the issues around transparency that you have raised are quite important?

Mr PARKER — I think we have raised the major issues. Obviously there would be more transparency if the relevant criteria were set out in more detail in the bill. As I said, there are three or four factors plus a catch-all of any other relevant circumstance, so it fairly much open. It would be of assistance if there was more objective criteria set out.

Mr EIDEH — In your view, are there any other measures that could be implemented to improve housing affordability?

Mr PARKER — I probably could not comment on that — not on behalf of the law institute anyway.

Mr EIDEH — I was just asking for a view.

Mr DALIDAKIS — Mr Parker, you raised the issue of transparency, and it is one that I am keen to get some further advice from you on. If you remain concerned — and you noted the delicate balancing act between the privacy of those non-residents who may receive the benefit of the Treasurer's discretion, but there is a range of legislation obviously that allows the Treasurer to have discretion — would you be calling for all of those other pieces of legislation to have the same level of transparency that you may like to see for this piece, or is it specifically only this piece that you are calling for transparency on?

Mr PARKER — It is specifically this piece. The other circumstances where the Treasurer has discretion — I think he has some discretion under the Land Tax Act at the moment, but they are much less substantive matters.

Mr DALIDAKIS — So your issue is with the substance. Is that correct?

Mr PARKER — Yes.

Mr DALIDAKIS — The Treasurer has discretion on the Financial Management Act, the liquor subsidy payments, obviously land tax exemptions for the Urban Renewal Authority. There are also exemptions provided under land tax, as you have noted, and also payroll for group training organisations. I would probably put to you that it is just as substantial for those organisations involved as it would be for this, and I am keen to, again, better understand why you believe that the issue of transparency is so great on this particular issue and whether or not you have received any correspondence from the Treasurer replying to your concerns at the law institute and whether or not you feel that in that response from the Treasurer that they have been dealt with appropriately.

Mr PARKER — I must say the institute has received a response. I was only advised this morning; I have not seen it.

Mr DALIDAKIS — Okay. So that may change your view or testimony depending on what is in that correspondence. Is it fair to — —

Mr PARKER — I have not seen the response, but I believe from discussions with people at the law institute that no, it did not address the concerns. But I obviously cannot comment on that.

Mr DALIDAKIS — Is there any opportunity for you to seek a copy of that correspondence and come back before the committee once you are better informed?

Mr PARKER — I could seek a copy of that, yes.

Mr DALIDAKIS — I appreciate your time, Mr Parker.

Ms HARTLAND — Can I just raise a comment? I think that last question was a bit unfair because we are talking about this bill, not other acts, not other pieces of legislation. Mr Parker was here to address this bill, and this bill only is what I understood this committee was about, as an aside.

The CHAIR — That is a fair point, Ms Hartland, and I suppose — —

Mr DALIDAKIS — I do not think it is fair at all. In fact Mr Parker raised the issue — —

The CHAIR — Thanks, Mr Dalidakis.

Mr DALIDAKIS — No, Mr Parker raised the issue of transparency — —

The CHAIR — Sorry, Mr Dalidakis, I am speaking, thank you.

Mr DALIDAKIS — Yes, and I am responding.

The CHAIR — In terms of where we are, I think that is an important point to make there, Ms Hartland. Obviously you have come here today, Mr Parker, to make comment on this particular bill that is before us, and we certainly appreciate your time in doing so.

Mr PARKER — But I am happy to respond to Mr Dalidakis if — —.

The CHAIR — If you so wish, Mr Parker.

Mr PARKER — As I said, I am aware that there are other circumstances where the Treasurer has discretion, such as under the Land Tax Act and the Payroll Tax Act, but I would not have thought those were as significant in totality as in this particular bill. And obviously those particular discretions are directed at a particular legislative outcome, whereas there is no legislative purpose behind these provisions that you can put your hand on. Basically it is up to the Treasurer's discretion. There is no legislative purpose in the bill that gives any guidance as to why the Treasurer would or would not exempt anybody.

Mr DALIDAKIS — Would not the issue of tax avoidance be an issue in and of itself?

Mr PARKER — That may well be, but that is not what is specified in the bill.

Mr DALIDAKIS — Is that not a good public policy pursuit to limit the ability of people to reduce and minimise the appropriate tax that they pay into the jurisdiction of Victoria? Is that not a good public policy pursuit?

Mr PARKER — I am not sure how giving the Treasurer discretion addresses the issue of tax avoidance.

Mr DALIDAKIS — But we are talking about a policy that is specific for non-residents only. So to try and ensure that non-residents are caught up in that provision, the legislation has been written in the way that it has to ensure that non-residents are caught up in that provision, which is why that discretion is then available to the Treasurer to exclude those people from being caught up who do not deserve to be so.

Mr PARKER — If the purpose is to tax non-residents, then what is the purpose of the Treasurer being given a discretion to exempt them from the tax, if they are clearly a non-resident?

Mr DALIDAKIS — By virtue of the fact that there is an exemption. I can give you the response if you wish.

Mr PARKER — There is nothing in the legislation that provides a purpose.

Mr DALIDAKIS — No, but the legislation and the exemption is provided so that the end purchaser is the non-resident that is taxed, not the corporation that is necessarily building it for residents or citizens to purchase. That is henceforth the reason for the exemption and the ability for the Treasurer to create that exemption in the first and subsequent instances.

Mr PARKER — That may be the intention, but it is not reflected in the legislation.

Mr DALIDAKIS — According to your perspective.

Mr PARKER — I would suggest it is not reflected in the legislation, full stop.

The CHAIR — Good point, indeed.

Ms HARTLAND — Would it be possible to have a copy of the letter that the Treasurer has sent to the law institute?

Mr PARKER — I do not have a copy; I can obtain one.

Ms HARTLAND — That would be fantastic.

The CHAIR — Yes, at some point in time, that would be wonderful. Very good. Thank you very much, Mr Parker, for your time; it is very much appreciated.

Witness withdrew.

CORRECTED VERSION ONLY

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Subcommittee

Inquiry into the State Taxation Acts Amendment Bill 2015

Melbourne — 15 June 2015

Members

Mr Joshua Morris — Chair

Mr Philip Dalidakis

Mr Khalil Eideh

Mr Nazih Elasmr

Ms Colleen Hartland

Staff

Secretary: Mr Michael Baker

Research officer: Mr Anthony Walsh

Witnesses

Mr Michael Brennan, Deputy Secretary, Economic, and

Ms Trudy Hart, Director, Tax and Intergovernmental Relations, Department Of Treasury and Finance; And

Mr Vasko Nasteovski, State Revenue Office.

The CHAIR — I declare open the Legislative Council Economy and Infrastructure Committee public hearing. This hearing is in relation to inquiry into the State Taxation Acts Amendment Bill 2015. I welcome the State Revenue Office and the Department of Treasury and Finance.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders, therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. All evidence is being recorded, and you will be provided with proof versions of the transcripts in the next couple of days.

We have allowed 45 minutes for this session. To ensure there is sufficient time for the questions, the committee asks that any comments be kept to around 10 minutes. Finally, I remind you that this inquiry is only obtaining evidence in relation to how the measures in this bill will impact on housing affordability and housing supply in Victoria, so please consider your evidence to ensure that it addresses the committee's terms of reference.

Having both organisations here, Mr Brennan, would you like to begin, and we can follow through.

Mr BRENNAN — I have a brief opening statement prepared. Thank you very much to the committee for having us here today. The State Taxation Acts Amendment Bill, as you know, essentially does four things. It proposes a new land transfer duty surcharge on foreign purchases of residential real estate; it introduces a land tax surcharge on absentee landowners; and then in addition to that it introduces a motor vehicle duty exemption for vehicles classified as mobile plant or plant-based special-purpose vehicles; and a number of small changes to landholder duty legislative provisions. The committee's inquiry obviously is principally focused on the housing affordability issue, so I will confine my remarks to the first two of those initiatives, which are most relevant.

The bill proposes the imposition of a land transfer duty of 3 per cent of a property's market value on foreign investors and temporary residents who purchase residential property. The land tax surcharge is 0.5 per cent on the unimproved value for absentee landowners, including for residential and commercial land. Absentee landowners are here defined by three key characteristics: it is those who do not ordinarily reside in Australia, who are also either absent as of 31 December in any preceeding tax year, or for more than six months of the year in the current year before the year of the land tax assessments — that is, before 31 December of the relevant land tax year. However, citizens of Australia and New Zealand and permanent residents of Australia are excluded from the land tax surcharge.

Although the focus of these committee hearings is essentially on housing affordability, it probably bears repeating that the primary motivation for these measures and the stated rationale for these measures as set out in budget paper 2 is really, if you like, an equity measure. It is largely about ensuring that foreign investors who gain the benefit of the capital appreciation and price growth, particularly pursuant to state government investment in services and infrastructure, pay their fair share for those things. It obviously does have some bearing on housing affordability.

Both surcharges aim to ensure that foreign buyers are contributing fairly to the provision of government services. In Victoria government services are obviously funded by a wide range of commonwealth and state own source revenue lines, and local property owners contribute to many of these tax bases over an extended period of time and therefore carry a greater weight of the tax burden required to develop and maintain government services. Conversely, foreign buyers of real estate are generally limited to property-based taxes such as land transfer duty, land tax and, at the commonwealth level, capital gains tax and any tax on income earned in Australia, which may well be limited.

Just turning to the housing affordability issues, I think it is worth mentioning that the link between foreign investment in residential real estate and housing affordability is not necessarily straightforward. Under the national rules of the Foreign Investment Review Board, foreign investment in residential real estate generally must increase the level of the housing stock, so it generally occurs by the acquisition of new dwellings, off-the-plan properties under construction, or yet to be built or vacant land for redevelopment.

In recent years the number of approvals for residential real estate granted to foreign buyers has increased sharply. In the medium to long term this should increase the supply of housing and add to the housing stock and, importantly, when those properties are eventually on-sold, they must be sold to Australian permanent residents or citizens under FIRB rules. Additional supply therefore can improve housing affordability for local

buyers in the long run. However, in the short run, the stock of new houses can be relatively fixed due to planning processes or construction time lines or just to some extent a limit on the capacity of the construction industry to respond to new demand. So it is likely, given these constraints, that very strong demand from foreign investors can also in the short term bid up the price of a given stock of houses depending on the price responsiveness or elasticity, and that can have a negative effect particularly in the short term.

Not all foreign investment approvals necessarily result in sales, and that is a weakness in the FIRB data and part of the data limitations with which we deal. The *Report on Foreign Investment in Residential Real Estate* published by the Standing Committee on Economics for the House of Representatives in 2014 noted that approval data does not reflect actual purchases and:

There can often be a lag of several years between the time a certificate is granted to a developer and the time the development is constructed and individual dwellings in it are sold.

That does dilute the impact of foreign investment on housing affordability.

Also worth noting is that for purchases of residential property by temporary residents, the impact is more straightforward, because FIRB permits temporary residents to purchase established dwellings for the purpose of a residence as well as new properties that increase the housing stock. In either case temporary residents are likely to add to the demand for housing while not necessarily changing supply, at least in the short run, so the additional demand can add to pressure on house prices and reduce affordability.

Both of the surcharges aim to ensure that foreigners and temporary residents contribute a fairer share to the provision of services that increase their capital growth. To the extent that either surcharge corrects for the implicit transfer from local taxpayers to foreign investors, this may remove some of the incentives at the margin for foreign investors to buy residential property in Victoria, and it may make local Victorian buyers relatively more competitive in the housing market. There may be, for example, a reduction in incentives for foreign individuals purchasing single investment properties or temporary residents purchasing homes.

I am happy, Chair, to leave it at that, noting perhaps just one other thing by way of opening statement — that the government has already committed in the 2015–16 budget to a broader review of housing affordability and the release of the terms of reference and further discussion on that review will be a matter for the government. But, as I think was alluded to both in budget paper 2 and in the second-reading speech of this bill, the measures in this bill are, if you like, part of the government's broader suite of policy or policy direction in relation to housing affordability, but not the sum total of it.

The CHAIR — Certainly. Thank you, Mr Brennan. Ms Hart, did you have any opening remarks you would like to make? All right then, we might zip along the panel and ask a few questions. I might kick off with one. In terms of the new taxes that are being described as modest by the Treasurer, will these new taxes achieve their intended outcomes of housing affordability, due to the modest nature of the tax?

Mr BRENNAN — I will have a go at that one, if it is all right, Chair.

The CHAIR — Please.

Mr BRENNAN — As I said at the outset, it is important to remember that the primary motivation is essentially the equity motivation, so it is to ensure that when foreign investors are purchasing property in Victoria and thereby moving forward over the longer term and benefiting from the investments made in services and infrastructure via capital growth, that they are effectively paying a fair share of that potential capital upside. As I say, that is the primary motivation, so it is less about discouraging foreign investment as ensuring that where foreign investment occurs, the foreign investor is adequately paying for the benefit that they will receive.

In terms of the impact on housing affordability, I make two observations. I think there is a clear, immediate impact on housing affordability when you take the instance of a domestic buyer who might be trying to purchase some housing that might also be of interest to a temporary resident who, under the FIRB rules, is allowed to invest in established property. Clearly the temporary resident who is subject to the stamp duty surcharge finds themselves at a slight comparative disadvantage relative to the domestic buyer, so to that extent I think it is a reasonably straightforward conclusion that the provisions of the bill aid housing affordability to domestic buyers in that respect.

The question as to the longer term dynamics of what will happen in terms of housing supply and affordability over the longer term are a little more complex to work through. As I mentioned in my opening remarks, leaving aside for a moment temporary residents, who are permitted to invest in established property, so taking just those who are non-residents who are restricted to purchasing only newly constructed dwellings, on the face of it I think it is taken from that that all new foreign investment effectively increases the housing stock. In one sense that is true, because that is true by law. The question is still, though: does it increase the housing stock relative to the counterfactual if you did not have the foreign investment? For example, when you see a surge in demand from offshore investors wanting to buy into the Victorian property market and it is by FIRB rules mandated that they have to invest in new property, you have in effect a dollar of new demand and you have a kind of an offset in supply.

The question is: when demand increases by a very significant amount, is supply actually expanding by exactly that amount, or are we observing that there are some constraints on the supply side that mean that the increased demand might nonetheless be bidding up the cost of even new housing, even though the FIRB rules require that this foreign demand be channelled into new housing? There is a possibility that in the short term it nonetheless bids up the price of new housing and possibly with some flow on to established housing.

Over the longer term there might be a different dynamic where you have a significant housing stock increase where the foreign investor, when they come to sell, is actually limited to selling only to an Australian. That might have some benefit to housing affordability down the track if there is an increased supply coming onto the market at some future point. But data on those points is very limited and the evidence is largely anecdotal, but for the most part the anecdotal evidence appears to be that most foreign investors are relatively long-term purchasers, so there is not necessarily an immediate augmentation of supply coming onto the market at some future date. In terms of tracing the dynamic of foreign investment through to housing affordability in general, it is quite complex and there can perhaps be a distinction between the short and long term.

I suppose the only other point I would raise, coming back to your original question, Chair, is the question of whether or not the provisions in this bill, or the new impositions in this bill, will have a material impact on the level of foreign investment. Again, the data is not going to furnish you with a really clear answer necessarily on that, but we would make the observation that we have seen significant increases in demand from foreign investors in recent times kind of irrespective of price dynamics, which suggests that what is driving it is not necessarily price — that a 3 per cent rise, for example, in stamp duty is not necessarily going to drive, of itself, a really significant change in the level of foreign investment in Victorian residential real estate.

The CHAIR — Sure. In terms of the new taxes, there have been new guidelines that will provide for exemptions to these taxes. That is correct, is it not?

Mr BRENNAN — It is.

Mr NASTEVSKI — Can I just contribute to the question?

The CHAIR — The first one or this one?

Mr NASTEVSKI — This one. The exemption is actually provided under the legislation. The guidelines are mere explanatory materials that extrapolate a bit further in terms of what the exemption in the bill provides. Just like the State Revenue Office issues many public rulings, guidance notes, bulletins and website information that explains obviously complex legislation to help and assist taxpayers in understanding those requirements, these guidelines that the Treasurer has issued have that same intent, I guess. The guidelines themselves do not provide the exemption; the exemption is provided in the bill. These explain that exemption in the bill, the mechanics of it and how it should operate.

Mr ELASMAR — Does the Treasurer have to report on the exemption every time under the Victorian tax law?

Mr NASTEVSKI — Under any state tax legislation?

Mr ELASMAR — Yes.

Mr NASTEVSKI — There is no requirement under any state tax laws for the Treasurer, or even the Commissioner for that matter, to report on exemptions or concessions. With the exception — there is a

corporate reconstruction exemption in the Duties Act, which does have a requirement for the results of that exemption to be tabled in Parliament. But in the whole suite of other legislation there is no requirement. To perhaps pre-empt another question, a lot of that aggregate sort of information is contained in the budget papers every year. But there is no breakdown of who is exempted or by how much.

The CHAIR — In terms of the guidelines that were produced after the bill had been written, do those guidelines provide for a broader suite of peoples who may be exempt from the taxes than would have been initially available? In terms of the scope of those who would be exempted from the taxes, after the advent of these guidelines, has that been broadened or has it been narrowed or is it exactly the same?

Mr NASTEVSKI — Neither one. The first point to make there is the fact that the exemption that exists in the legislation is an exercise of a discretion, so by definition you cannot confine or pinpoint exactly who that will apply to. But the guidelines merely extrapolate on the existing principles that have been placed in the legislation and just explain a bit further in terms of what those principles are in terms of control, influence, and those sorts of issues. They do not go beyond what the legislation does, other than perhaps articulating a statement of intent that the Treasurer might have in terms of who he considers he would turn his mind to.

The CHAIR — So these guidelines are really just a way of putting down on paper what was already going to be, in effect, occurring under the act prior to them?

Mr NASTEVSKI — That is right, but extrapolating a bit further in terms of what those principles mean, those principles that have been legislated in the bill.

The CHAIR — Was the incorporating of the guidelines into the act thought of during the drafting of the bill? I am not sure who is the best to answer this, but obviously the guidelines came out afterwards. Were they ever thought of as being added directly into the bill?

Mr NASTEVSKI — No, and I say no on the basis that it was not deemed necessary, because the exemption has already been drafted. I think I said previously the guidelines are the explanatory materials; we do not normally legislate explanatory materials. I mean, state taxation generally is quite complicated at various levels. If you hop onto the State Revenue Office webpage, you will find a plethora of rulings and information and bulletins that try to explain a bit further what that legislation means. This is no different to that. It is a general administrative tool that we use, so in that sense, no, it did not even come to mind.

The CHAIR — In terms of lodging a request for an exemption, how does that process occur?

Mr NASTEVSKI — In relation to this exemption?

The CHAIR — Yes.

Mr NASTEVSKI — I will qualify this by suggesting it is not law yet, so it is not set in concrete in terms of how it might apply. My qualified answer would be: like any other provision in state taxation legislation. Given that this is in the first instance a power that is vested in the Treasurer, I suspect, without prejudice, that the Treasurer might seek advice or information from the administrator as to whether the exemption should or could apply to certain circumstances.

The CHAIR — In terms of the process of disclosing to whom exemptions are made, what is the process for that?

Mr NASTEVSKI — Generally in state tax legislation we are prohibited from naming who has the benefit of an exemption or, alternatively, who has been taxed at a certain rate. Anybody that is delegated to administer state tax legislation is prohibited in that sense through various privacy and secrecy provisions; for example, I, myself, could not do that. Coming back to this particular exemption, there is no requirement for this exemption for the Treasurer or the Commissioner to report on who has the benefit of it. But, as I said earlier on, that is no different to any other exemption or concession.

The CHAIR — In terms of the guidelines, is the Treasurer bound by those guidelines, or could he just provide an exemption to whomever he wants without the need for that to be disclosed?

Mr NASTEVSKI — No. Well, the Treasurer is bound by the law, so what the law provides in terms of the scope, that is in the actual bill itself. He cannot, obviously, make any decisions that go beyond what is there, and, as I think I said before, all the guidelines do is merely extrapolate on what is in the law. He cannot do whatever he likes; he still has to come back to what the law says.

The guidelines themselves are obviously not binding in any sense. They do not have any legislative authority, just like any other administrative tool that we utilise to explain how provisions operate are neither binding. Having said that though, if I can draw an analogy, the Commissioner regularly puts out public revenue rulings to help taxpayers and their representatives in terms of how we would apply or interpret various provisions. If the Commissioner does put out a public ruling or any other materials, then we will tend to bind ourselves to what that public articulation is so we are not changing the goalposts halfway through.

Mr EIDEH — What is the current level of home ownership in Victoria, and has this changed over the last five years?

Mr NASTEVSKI — I might defer to my Treasury colleagues.

Mr BRENNAN — Trudy, I do not know if you want to talk.

Ms HART — I do not know if we actually have data on home ownership as such. We have some data on investment levels.

Mr BRENNAN — In rough terms, in terms of levels of home ownership, I think it is still the case that — and I will take this on notice and come back to the committee if I need to correct this — in broad terms about a third of the community are private renters, about a third own their properties outright and about a third are paying off a mortgage. I do not think those proportions have changed really significantly. What we have seen is some fall-off in the level of first home owners entering the housing market in recent years, reflecting no doubt a range of factors, most notably the general price appreciation, and that has proven a general challenge for a first home owner on an average, or perhaps a bit below average, income, if they are a bit younger in the age distribution, to gain an early foothold in the property market.

There remain a number of incentives in place to try and assist first home owners. In Victoria it is the \$10 000 grant for new construction and the 50 per cent stamp duty concession which applies across both new construction and existing housing stock. But notwithstanding those measures, I think it is fair to say that if you look at, for example, housing finance data from the ABS, the value of finance approvals to first home owners is at a relatively low level compared to historical norms.

Overall, it suggests that there are some challenges associated with housing affordability. I think the measurement of that is a challenge. There are housing affordability indicators which go to the comparison between, for example, a median income or an average income and a median house price as transacted in the general market. Whether that is a perfect indicator of the true state of housing affordability, I think it is fair to say we are not altogether convinced, because there are some very high-priced properties transacting in the market possibly a bit unrelated to the level of incomes of those transacting them, where people have got significant equity in their existing properties. But the key question is: is there a suite of affordable home ownership options for first home owners? I think there is some evidence that across the board that has become a little more difficult for first home owners at present.

Mr EIDEH — Has this figure changed dramatically in the last five years, do you think?

Mr BRENNAN — I would have to check the evidence on that. In the last five years, possibly not that much, but in the longer period, yes. But I will come back to the committee, if that is all right, with some further data on that.

Mr ELASMAR — Michael, the bill introduces 3 per cent stamp duty surcharge on foreign purchasers. Can you explain why it is 3 per cent?

Mr BRENNAN — Really just that 3 per cent was the decision that the government made. As I said at the outset, the motivation for the measure is essentially an equity motivation. It is really about making a judgement about the appropriate level of contribution which the government would be seeking from foreign investors to adequately represent the benefit that they might receive from services and infrastructure that then feed into

capital price appreciation. It is not really, I guess, for us so much to speculate about why 3 per cent as to say, 'That was the judgement that was made by government as to what an appropriate level for this surcharge would be'. It is in addition to the existing stamp duty rates, which I guess — —

The top marginal stamp duty rate is actually 6 per cent, but at high property values there is an average of 5.5 per cent, so I guess it is worth noting that 3 per cent is broadly comparable to around the mid-range of that, but I am not saying that that is necessarily the answer. I think it reflects the judgement by government about an appropriate level for this levy.

Mr EIDEH — Is it likely to increase or decrease, do you think, in the next years — this 3 per cent rate?

Mr BRENNAN — That would be a decision for government, so I would not speculate about where government policy might go in relation to that. The 3 per cent — there is no mechanism automatically by which it changes. In the law it is 3 per cent, but it is a percentage of the value transacted, so as property prices rise, then the dollar value that is paid — and that is just like normal stamp duty. For a given percentage of a rising house price, it might mean more dollars in absolute terms, but 3 per cent is fixed under the act.

Ms HARTLAND — I have got a couple of, I suppose, more technical questions. So if we took it over the last year, do we know how many foreign investors there have been? And if we took it over the last year, do we know how much revenue would be raised by that number of investors?

Mr BRENNAN — I will have a first go, and I might hand over to Trudy after that. It is worth noting that in this area data limitations reign supreme — or not quite supreme, but they are perennial. There are two primary data sources that we use. One is in relation to the reporting that is done by the Foreign Investment Review Board. The FIRB puts out essentially an annual report which illustrates both the number and the value of approvals which have been sought and granted by the FIRB for investment in residential real estate, and we do have a breakdown at the state level and a breakdown by new dwellings, existing property et cetera.

In the 13–14 year, which is the most recent year for which data is available, for new dwellings in Victoria there was about \$2.85 billion of approvals to foreigners for new dwellings. For existing properties — this would be predominately going to temporary residents buying up property for their own purposes for the time that they are in Australia — \$3.2 billion, which is the highest of any state. There is a small amount explicitly for redevelopment, and that is \$0.38 billion. For vacant land, \$0.79 billion, and then there is a category described as 'developer', which is larger still, which is \$6.78 billion.

I will talk to two elements of the limitations on the data. The first is particularly in respect of existing properties. It is not clear, necessarily, that every successful application culminates in a purchase, because a temporary resident, for example, might be wishing to bid at an auction. They will seek a FIRB approval in relation to a specific property. They miss out at that auction. They might end up with multiple approvals and eventually secure a house. So it is possible that both the number and the value could be slightly overstated there. In relation to the large amount that is attributable to developers, it is worth noting that they are very small in number and very large in value, and what that reflects is that you can, as a developer, seek and secure a kind of blanket approval when you are going to sell some property off the plan for your development as a whole, noting that you are going to be selling some properties off the plan potentially to foreigners.

You can get a one-stop approval for that, so that will count as one approval but with a large value. But it is quite possible that much of the stock that you are ultimately selling will not actually be sold to foreigners, even though you have sought approval for the whole amount. I think our domestic financial institutions would tell you that when they are financing the construction particularly of a new, large-scale residential development they will often require that a certain amount be sold into the domestic market rather than being 100 per cent foreign sold. So it is possible that those developer numbers are also slightly exaggerated in terms of defining how much actual activity there is.

The only other data that is really available comes from the NAB, who also have a survey that roughly reflects the percentage of activity in the market that is represented by foreign buyers — or offshore investors. My understanding of that data is that in the March quarter of 2015, so a little bit more up-to-date than the FIRB data, overseas investors were about 20 per cent of the new property market — that is newly constructed dwellings — and for the established property market more like about 8.5 per cent. I would have to go back and check the record as to how that compares with history, but those numbers are reasonably significant.

In terms of the amount that the levy would raise, my gut feeling is if it were in place, for example, in the 14–15 year, I think our estimate would be similar to the estimate that we have got in the budget papers — in budget paper 3 — for the 15–16 year. I do not know if you want to comment further on that.

Ms HART — I do not think I need to add anything more. The reality is, as Michael presented, the FIRB data is one of the inputs that we use in our modelling to come up with the revenue forecasts. So we take account of that. We take account of information from the SRO in terms of activity in the market. We take account of many economic sources, all publically available. So, as Michael says, the forecasts are based on our best estimates of all of that material combined.

Ms HARTLAND — I have another question. A property developer purchased land 10 years ago and is now at the stage of developing it, but because they have purchased it 10 years ago, will they now be subject to this tax?

Ms HART — They would not be subject to the tax in terms of the purchase, because that occurred prior to the proposed implementation date.

Ms HARTLAND — So even though they will be developing and selling, that will not be —

Mr BRENNAN — No. The subsequent sale of the properties will attract the surcharge. So they would not be retrospectively charged on the original purchase of a site, but — correct me if I err — to the extent that they enter into a contract of sale post 1 July to an offshore purchaser who is covered by the surcharge, then the surcharge would be payable on that transaction.

Ms HARTLAND — But if they have sold to a local buyer, then they would not pay that tax for that particular year.

Mr BRENNAN — No, they would pay the orthodox land transfer duty. Land transfer duty, as a transaction tax, hits at each stage in the production process, so to speak. Notwithstanding that the surcharge was not in place when the original site might have been purchased, to the extent that there are dutiable transactions that occur post 1 July, if they are going to foreigners, they would attract the surcharge.

Mr DALIDAKIS — On that point, can I just clarify that we are actually talking about non-residents, because you can have a foreign national who is a resident. Is that correct? That is my understanding; we are talking about non-residents, not foreign nationals. A foreign national could still have a residency in Australia.

Mr NASTEVSKI — It depends on which surcharge we are making reference to, so for example, the absentee owner land tax surcharge. That, in the first instance, carves out people who are Australian citizens, New Zealand citizens and permanent residents. But then in a second layer to that it carves out anybody who would be ordinarily residing in Australia. In relation to the stamp duty non-resident duty surcharge, there is a definition there that defines who the foreign purchaser can be. In defining who the foreign purchaser is, it carves out Australian citizens, permanent residents and New Zealand citizens.

Mr DALIDAKIS — I think Ms Hartland raises a very important point with one of her questions. If a non-resident, a foreign national, purchased a block of land to develop, in and of itself that does not attract the 3 per cent surcharge unless they sell it to non-residents. Can you tease that out for me and explain that aspect of the legislation?

Mr BRENNAN — I will start, and I will hand to Vasko after that. That is the policy intent, as identified in the guidelines distributed by the Treasurer to the extent that you have acquisitions undertaken by someone who would notionally fit the description of not being a permanent resident or an Australian citizen.

Mr DALIDAKIS — Use ABC Pty Ltd property developer as an example.

Mr BRENNAN — Yes, but the purchase of that land for the purposes of development and expanding supply would be the sort of transaction for which the Treasurer's exemption would apply — the exemption under the law, I should say, would apply.

If I turn to the Treasurer's guidelines, the fifth paragraph states that:

The persons that are intended to be exempted from the non-resident duty surcharge from 1 July 2015 are those whose commercial activities add to the supply of housing stock in Victoria (either through new developments or through redevelopment, where such development is primarily residential). All other duties that are usually imposed will remain in place. The intention to exempt from the non-resident duty surcharge remains at the discretion of the Treasurer

That is, if you like, an indication of the policy intent which is that it is really the final sale to a foreign purchaser of a unit or a house that would be captured by the 3 per cent.

Mr DALIDAKIS — Did you want to add to that?

Mr NASTEVSKI — No, I do not need to at this stage.

Mr DALIDAKIS — One of the points on the back of that response that I want to understand is that you referred to the guidelines, but in Mr Nastevski's evidence he made it very clear that the Treasurer is bound by the legislation, and the guidelines are only indications to the general public. I just want to clarify: is it the guidelines or the legislation that the Treasurer is bound by, that he adheres to, or are you using the guidelines in response to my question purely to provide that supporting evidence for, I guess, people to be comfortable about the operation of the legislation?

Mr BRENNAN — That is right, the illustration of the policy intent. But I might hand over to Vasko on the question of the legislation.

Mr NASTEVSKI — Certainly in the first instance, *prima facie*, the Treasurer would be bound by what the legislation articulates. As a second point, and I have said this previously, the guidelines have been issued by way of acting as explanatory material, so explaining what the Treasurer is bound by under the legislation. They merely extrapolate. As I said earlier, I think there are about four or five matters or principles that the Treasurer needs to take into account under the legislation. All the guidelines do is, firstly, articulate the policy rationale behind the mechanics of the exemption and who that might capture, but also further explain, again, what the legislation is supposed to do.

Mr DALIDAKIS — In the previous testimony from Mr Parker — and I am happy for my colleagues to correct me if they feel I am verballing him, which is not the intention — he raised the concern of transparency, I think, before you arrived or as you arrived to hear. He was concerned about the level of transparency by the Treasurer having the ability to make this exemption. So I am keen to understand in terms of its application, given that you said that the Treasurer is bound by the legislation and not the guidelines, whether or not the Treasurer can simply grant an exemption to anybody, or what the Treasurer is bound to by the legislation, as distinct from the concern that Mr Parker raised about the application of the guidelines.

Mr NASTEVSKI — In exercising the discretion under the legislation the Treasurer will have to give account or turn his mind to those matters that are listed in the legislation. They are the matters he needs to consider in exercising that particular — —

Mr DALIDAKIS — So an exemption can only be granted in keeping with that legislation, not because he likes Philip Dalidakis's cousin, who turns up and asks for an exemption because he is trying to get his money out of Greece in case they default. I am happy to use my family as an example so I do not smear anybody else; again, I am just making it quite clear that — —

Mr NASTEVSKI — Whatever the circumstances might be, he would need to actually exercise his discretion as it is vested to him under the legislation.

Mr DALIDAKIS — Not that I think my cousins in Greece would do that, by the way; I am just putting that on the record too. In relation to the evidence that you gave, I think, Mr Brennan, about FIRB dollars and money coming into the country, in terms of the money in the forward estimates put towards this piece of legislation — this measure being implemented; the revenue measure — as distinct from the total dollars within the FIRB bucket, what are we talking in terms of that comparison or a measurement? Are we talking about a significant amount of foreign investment review money coming into Victoria, or are we talking about a comparatively minor sum, a drop in the ocean, so to speak?

Mr BRENNAN — I would refer you to budget paper 3. We outlined the revenue that is estimated to be raised, for example, in the 15–16 year, which is the first year of operation of the surcharge from that particular

measure, the 3 per cent surcharge, at \$39.5 million rising to a number more like \$65.5 million as the initiative takes full effect.

I take your point to be, if you compared that, for example, to the kind of levels of investment formally being approved under the FIRB process in the 13–14 year, it was in the order of \$10.4 billion for Victoria in terms of residential real estate, and that may climb yet further in 14–15 and 15–16, I guess. Given the current trajectories, that remains to be seen, but yes, I guess it would be really, to your question, a juxtaposition of an aggregate level of approval in Victorian residential real estate of 10 and a bit billion, and revenue in this instance of, call it 40 to 60 million.

Mr DALIDAKIS — My last question, Chair: if we are looking at the actual cost of the 3 per cent charge to the non-resident off the \$1 million property, for example, we are talking about an additional cost of \$30 000 over and above the property. Do you have any experience in terms of the modelling and having a look at that 3 per cent charge how you got to the 3 per cent charge in the first instance and also whether or not in your own modelling you thought that the 3 per cent charge would either reduce competition within the marketplace — in which case it reduces the cost of housing to residents and/or citizens — or if your view is that it has been targeted at 3 per cent because at that percentage it does not distort the market greatly in terms of competition or competitive neutrality; in fact what it does is that it says that for non-residents competing to purchase, then that additional money can go towards great infrastructure spend and the like, in terms of the services it is providing to citizens et cetera.

Mr BRENNAN — In a moment I will hand over to Trudy for anything I leave out in terms of the technicality of how the initiative was costed. The broad issue in terms of the choice of the level, 3 per cent, referring back to the previous question, I guess that just reflects the judgement of the government given its equity motivation in ensuring that there is an appropriate share of services and infrastructure being, as it were, funded by this initiative. Three per cent was the level that the government arrived at.

In terms of costing it then, it requires a degree of judgement about what the price responsiveness in this particular market might be and whether there would be a significant demand reaction to a new impost of 3 per cent. Again data limitations mean that it requires a level of judgement to come to a view about that. Our view would be that the revenue projections we have made are accurate within the kind of data limitations we face, but reasonably conservative.

It is worth noting, just in terms of how elastic or inelastic — that is, how responsive demand actually is to price — that in the House of Representatives inquiry into foreign activity in the Australian residential real estate industry it noted that, particularly for higher level investors, the kinds of existing penalties that one might face under the FIRB rules, which can go up to about \$85 000, were in some instances sort of regarded as the cost of doing business. That probably puts the kinds of surcharges that we are talking about here in some perspective. In addition to which the Commonwealth also has its new application fees as well for FIRB applications. So taking an example of, say, a \$500 000 property, the stamp duty surcharge on that would be 15 000. I think the FIRB application would be 5000. The core stamp duty — I would have to remind myself of what the core stamp duty would be on that. It would probably be around 15 000 — —

Mr NASTEVSKI — Maybe a bit more.

Mr BRENNAN — A bit more. In general our judgement would be that we do not anticipate a really significant demand response pursuant to this 3 per cent impost. As we noted earlier, the level of activity or the level of demand from foreign investors is sufficiently variable and has grown by such a strong amount in recent times due to factors completely obviously unrelated to price. That kind of puts in perspective, I guess, what level of response you might see from a 3 per cent surcharge, which we would anticipate would be reasonably small. I am not sure, Trudy, if you want to add anything further to that.

Ms HART — The only thing I would add is that in terms of the starting question around the proportion of our budget forecasts in relation to the FIRB approvals, it is important to remember the lag. So when Michael was talking about a number in the order of 10.4 billion, that is 13–14 FIRB approvals. And we are comparing it now to budget estimates for 15–16, so it is very difficult. You cannot look at FIRB approvals and take a percentage and make an assumption about what that will generate through this measure.

Mr DALIDAKIS — But it is fair to say that the base analysis provided by presumably DTF is that that 3 per cent margin or that 3 per cent figure is set at a price point that should not distort the market in terms of being competitive but at the same time should provide a level of revenue returned to the Victorian government to provide for services and infrastructure that otherwise may not be the case.

Ms HART — I think that is a very good description.

The CHAIR — I have just got two quick ones just to finish on. There were a couple of property groups that described the publishing of the guidelines as dodging a bullet and a major win for homebuyers. Were they misguided in making those statements insofar as there was no in effect change to where we were once the guidelines were published as opposed to when we just had the bill, as it were, prior to the guidelines?

Mr BRENNAN — I do not think I can comment on those particular perceptions. I just note that the bill provides a mechanism for the Treasurer to exercise the discretion to provide an exemption. The guidelines to an extent really follow on naturally from that in terms of putting some descriptors or flesh on the bones as to when that discretion will be exercised. So I think there is probably a natural chronology in these things. Beyond that, I would not seek to comment on the views of these players in the market.

The CHAIR — Just one final question in terms of the application of the law within this bill for the Treasurer to only be able to provide exemptions that are provided for within the law. If there is no openness in terms of who is exempted from that, how can the community be assured that the law is being followed by the Treasurer within this particular act?

Mr DALIDAKIS — I think Mr Brennan probably misunderstood your first question. If I understood your question right, your first question was that if people have put out a release welcoming the release of the guidelines, whether or not they have been misled because the intent of the legislation has not changed. Is that right?

The CHAIR — Yes, whether or not they have been misguided in making that statement because there has in effect been no change in the application of the law.

Mr DALIDAKIS — I have understood what you said.

The CHAIR — You have understood what I was trying to say.

Mr BRENNAN — I think I would nonetheless stand by the answer. I did misunderstand the question slightly, but I think the response is still apposite in as much as I guess the point is not for us to make a judgement about whether or not bullets have been dodged. It is just — —

The CHAIR — And so the question — —

Mr BRENNAN — There is a policy intent embodied in the fact that the bill provides the Treasurer with the ability to provide an exemption. The guidelines describe the circumstances under which that policy intent would be actioned. I could not possibly comment on the accuracy or otherwise of — —

The CHAIR — No, it was not about that statement; it was more about was there a material change to, in effect, the way the law was going to be applied once the guidelines had been published.

Mr DALIDAKIS — Or did the guidelines provide some level of certainty or understanding of how it was to be applied?

Mr NASTEVSKI — Based on lived experience, I guess, when we do issue public rulings or bulletins or guidelines or website information or anything to that effect, taxpayers and their representatives tend to appreciate that further piece of information that does provide them with greater levels of certainty in terms of how the very complex legislation would be applied in a consistent manner, I guess.

The CHAIR — Okay.

Mr DALIDAKIS — Sorry to interrupt you, Chair.

The CHAIR — No, thank you, Mr Dalidakis. I think that was quite worthy. My final question was around the openness in terms of the application of the exemptions by the Treasurer. How can the community have certainty that the law will be applied appropriately without any question that it is being applied? What is the check and balance?

Mr NASTEVSKI — The first point I would make is that, like anybody else, the Treasurer is also subject to what the law says. It would be doubtful that he would be acting outside of that. The next point I would make is that in exercising his discretion, as is normally the case with any minister, I guess, they would seek advice from their experts in the department, which is appropriate, in terms of how that legislation can be applied, so I would anticipate that there will be some form of advice sought from the department or the relevant agency in terms of applying the provisions.

But I think I mentioned earlier as well, just like any other exemption or concession in state taxation, there are no reporting requirements per se to itemise who has the benefit of any exemption or how much they have benefited from that exemption. There is reporting in the annual budget papers on an aggregate level. There might be a line item against this particular exemption in terms of how much has been issued. But if I can draw another analogy, under the Financial Management Act whenever a Treasurer, for example, provides *ex gratia* relief to a taxpayer for whatever reason, similarly that is not reported anywhere in terms of there is no notification as to who receives that *ex gratia* relief. But again it is reported, I think, in the annual budget documents in terms of the aggregate numbers that have been provided in that financial year.

The CHAIR — Excellent. Wonderful. If there are no further questions — my apologies, I did run us a little bit over time there — thank you very much for your attendance today and for answering our questions.

Witnesses withdrew.

CORRECTED VERSION ONLY

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Subcommittee

Inquiry into the State Taxation Acts Amendment Bill 2015

Melbourne — 15 June 2015

Members

Mr Joshua Morris — Chair

Mr Nazih Elasmr

Mr Philip Dalidakis

Ms Colleen Hartland

Mr Khalil Eideh

Staff

Secretary: Mr Michael Baker

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Witnesses

Ms Jennifer Cunich, executive director, Property Council of Australia;

Mr Nick Proud, executive director, Residential Development Council;

Mr Tom Cantwell, partner, property, Mill Oakley Lawyers;

Mr Rob Pradolin, general manager, business development, Australand;

Mr John Casey, policy advisor, and

Mr Peter Vlitras, board member and treasurer, Urban Development Institute of Australia.

The CHAIR — I declare open the Legislative Council economy and infrastructure committee public hearing. This hearing is in relation to the inquiry into the State Taxation Acts Amendment Bill 2015. I welcome all the members of both the property council and UDIA who are present here this afternoon.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, these comments may not be protected by this privilege. All evidence is being recorded, and you will be provided with proof versions of the transcripts in the next couple of days.

We have allowed 45 minutes for the session. To ensure sufficient time for questions, the committee asks that any opening comments are kept to around 10 minutes or so. Finally, I remind you that this inquiry is only obtaining evidence in relation to how the measures in this bill will impact on housing affordability and housing supply in Victoria, so please consider your evidence to ensure that it addresses the committee's terms of reference. I am happy to hand over to whoever would like to begin with the opening statement.

Ms CUNICH — I can do that. I will give you a bit of an overview. I am Jennifer Cunich, and I am the executive director of the Victorian division of the property council. To give you a bit of a background on building approvals, residential building approvals are at record levels, with the ABS reporting around 214 000 approvals for the year to April, 60 000 of these approvals were recorded in Victoria alone. Australia on average builds about 153 000 homes per year, so, in simple terms, we are actually building enough supply to meet pent-up demand. Foreign investment has underpinned this result, and with recent housing finance remaining strong it is looking like domestic building activity will remain strong for at least the next 12 to 18 months to aid supply.

In a development one foreign investor can assist the four other domestic buyers to allow the development to proceed, and it is for this reason that strong approvals activity is now being experienced to aid that supply. This supply is the fundamental panacea to challenge the housing affordability issue, we believe, that Australia is facing. The Foreign Investment Review Board, which enforces foreign investment rules, previously lacked the resources to undertake the work. The federal government has undertaken to properly resource the board to operate the rules and to collect more accurate data on foreign investment approvals to buy and actual purchases. This is a responsible step taken to ensure greater adherence to the rules but also to ensure that the flow of investment continues.

In terms of the non-resident surcharge, just prior to the 5 May Victorian state budget the government announced a non-resident surcharge and an additional land tax fee on absentee owners. The proposed surcharge applied an additional 3 per cent tax on non-residents — these are purchases of property and that is foreign investors — and an additional 0.05 per cent land tax. The government's intention was to apply the surcharge at the point of sale of houses and apartments. The property council, together with the UDIA, immediately raised concerns with the government, particularly around the unintended consequences of this tax. Over a period of three weeks we held high-level meetings with the Treasurer's office seeking changes to their non-resident duty and the absentee owner surcharges. We believe the Australian homeowners in the growth areas were facing an additional indirect tax bill of between \$2000 and \$6000 per property. This is because a surcharge would have applied at the very beginning of the process, and that is at the purchase of land prior to subdivision. Companies such as Australand, who are represented here today, and AV Jennings — Australand has been in the market in Australia for around 90 years, AV Jennings, in excess of 50?

Mr VLITAS — Eighty-odd years.

Ms CUNICH — Eighty-odd years, so long-term suppliers of housing into the Australian market. They are either wholly or partly foreign owned but produce housing stock for the domestic Australian market. This cost would have been carried through the duration of the development and passed on to the home purchaser, and these purchasers are predominantly first home buyers and Australian residents. As I said, together with industry, we negotiated exemptions to ensure that the Australian homebuyers with full or partial international ownership will not be forced to pass on the new taxes to future homebuyers. We believe this will save aspiring homeowners thousands of dollars by exempting the homebuilders from the government's investment tax. That is just setting the scene of what led up to the preparation of the guidelines.

The CHAIR — Excellent, thank you. Does anyone from the UDIA — Mr Casey or Mr Vlitas, do you want to make an opening statement?

Mr CASEY — I think Jennifer covered a lot of what was discussed leading up to the discussions with the Treasurer, but I would like to add that before the introduction of these surcharges there had already been a report on foreign investment in residential real estate and its impact, and there were already a number of findings there that identified that foreign investment has a positive impact on housing supply. So I think it is good to add that there had already been some discussions leading up to the introduction of these surcharges which identified the positive impact of foreign investment. We wanted to make sure that when we addressed a lot of the issues in our discussions with the Treasurer and the department that, with the supply of new housing, corporations that are wholly or partly owned by foreign investors are not impacted by the surcharge.

The CHAIR — We might just go along the panel in terms of some questions now. In terms of the guidelines coming out and the formulation of the guidelines, can you talk me through the steps that both the property council and the UDIA took insofar as how you were involved in the production of the guidelines?

Ms CUNICH — I might jump in there, because John came on board during this process. The government made the announcement on the Saturday prior to the state budget being handed down. We were in touch with the government, with the Treasurer's office, over that weekend, and we secured a meeting on the Monday. The UDIA and other industry representatives were at that meeting, including Nick Proud. Nick Proud is the executive director of the Residential Development Council, and he has been doing a lot of work at the national level on FIRB. So we secured a meeting and we discussed what we believed were the unintended consequences. We then followed up with a meeting the following Friday, I think it was, where we were asked to come back and look at what the options could be in a set of guidelines.

As I said in my opening statement, over that three-week period there were a number of meetings held to really go through line by line what the implications were and to be able to provide some evidence to the Treasurer's office about how this would impact on housing affordability.

The CHAIR — You spoke about the unintended consequences of the legislation. Were there changes to the legislation as a result of discussions between yourselves and the Treasurer, or did the legislation remain unchanged?

Ms CUNICH — The legislation remained unchanged, but it is dealt with through the guidelines. The guidelines provided that certainty around what was the intention of the legislation. As I said, we do not believe, and the government has said it was not their intention to have the tax applied at the very beginning of the process where it would flow on to Australian residents purchasing property.

Mr PROUD — The same thing was the case federally, so we had months of discussions with Kelly O'Dwyer, very positive, constructive discussions about when there is a set of guidelines — or, sorry, when there is a committee that reports on this — that this is a totally new phenomenon in Australian residential activity, having this amount of foreign investment. The context that is provided, Australia is experiencing around 200 000 — 214 000 building approvals per annum. They are significant numbers. We normally build 153,000 homes — so it is 50 000 more than we normally build.

Mr DALIDAKIS — Chair, can I reflect that you sent a copy of this Hansard transcript to Ms O'Dwyer, because I am not sure many other people have said something so nice about her before, and on the record. I think she should get that.

Mr PROUD — Certainly we have been very positive about the response from the federal government. As soon as we looked at new foreign investment fees and said, 'There is an annual program here, and one of our members is going to pay \$1 million for what they purchased, just straight out' — and this is a well-known Australian brand; it is not one of the ones in this room, but it was the example we used — there was an, 'Oh, okay'; there was a realisation that these businesses would be hit with new fees.

Coming back to the original position, we have not seen this kind of activity. We have 60 000 homes approvals above the average number built every year. When you look at, 'Okay, now we need to enforce the rules; how do we do this?', that is primarily where there has been on a big, long journey that we have gone on for nearly 12 months with the federal government, and we have had significant consultation. The local experience has

been guided by that, and that has been quite compelling. The work with the minister locally and the department has had the benefit of that hindsight, so we were very quickly able to explain there are issues, obviously, for primarily Australian businesses and developers, and the sorts of ramifications. That is the reality: that we have never dealt with foreign investment like this before.

Mr DALIDAKIS — Chair, if I may, on that point. On a more serious note, would you relate your dealings with the federal and the state bureaucrats and/or ministers' representatives as being on a par in terms of their responsiveness to the issues you have raised? Would you say that the federals have been better or the state has been better? How would you characterise the discussions you have had in relation to the concerns you have raised?

Mr PROUD — I would say that we have been able to leverage the federal discussions, which have been over a period of time, and we have been able to very quickly pinpoint what the issues were at the local level. I think the response from the state government here has been exceptional — to recognise very quickly that obviously there are new things that come into play when you look to raise new fees, new charges, and the complexity of this matter. When we have a federal regime which had not enforced the rules, and when you asked for details, statistics, and understanding from that, there was not enough detail. There is a learning process undertaken here, and the end result is getting it right.

The CHAIR — That is good to hear. In effect, the state governments have been the benefactors of the good work of the federal government. That is very good to hear.

Mr PROUD — And so it should be.

The CHAIR — And Ms O'Dwyer — absolutely.

Mr PROUD — Back and forth, there should be a good, positive, constructive engagement of state and federal government in these matters.

The CHAIR — I am always very pleased to hear that. Thanks for raising that, Mr Dalidakis — it was a very good point.

Mr DALIDAKIS — The exceptional response from the state.

Mr PROUD — Even though she is on maternity leave, we have had some great correspondence in recent days from Kelly. It is very positive engagement.

The CHAIR — Very good work of the member for Higgins indeed. In terms of the meetings that occurred in the development of the guidelines and the like, how many meetings were there that occurred?

Ms CUNICH — Three? Four? There were round tables — the group of the developers and owners in the room — and then there was daily dialogue with the Treasurer's office within the staff of the UDIA and the property council. It was daily.

The CHAIR — In terms of the meetings, who was present? Was the Treasurer himself present?

Ms CUNICH — Yes. The Treasurer and his advisers and departmental and SRO.

The CHAIR — Okay, very good. Did either yourselves, the property council or the UDIA draft any of the guidelines?

Ms CUNICH — No.

The CHAIR — So those guidelines were just provided to you for comment?

Ms CUNICH — A set of draft guidelines — —

Mr CASEY — Yes, there was a set of draft guidelines provided to us for comment, and we provided those comments according to what we thought would provide the intended outcome.

Ms CUNICH — And some clarity around it.

The CHAIR — Could you expand on what sort of commentary there was that was provided around the guidelines?

Ms CUNICH — When we had the very first meeting, and as I said AV Jennings, Australand, Mirvac —

Mr VLITAS — Lend Lease and Stockland.

Ms CUNICH — We actually ran through the whole process: what happens from the point of purchasing a site, and how the impact of this tax adds to the holding costs, in the whole development. You can have a seven-year program before you get to market, so the impact of a 3 per cent additional surcharge is carried through for that seven years. Seven years could be a good outcome — it could be a lot longer than that. You have got a lot of charges. We ran through some modelling with them. We provided modelling to the government. Nick Proud provided some that had been used for the federal government.

Mr PROUD — Yes, there is a good example here. The annual programs, which is the way the federal government looked at for developments, who buys the land now and how we deal with it. They go through an annual program. They buy up to a certain dollar value, and they do not have to go through the FIRB approval process for every single purchase. That has become the pre-qualifier federally, where if you are in the annual program, then you will be exempted from the process — you will not have the 1 per cent charge, which effectively it is federally. So they have actually referenced the annual programs in these guidelines, which is a good step. It is referring to the federal structure of: how do you acknowledge someone is exempted? There are positive inclusions that sense of Annual Program detail from the federal experience.

The CHAIR — From there as well — indeed. In terms of the guidelines themselves, what perspective does the property council or UDIA have on their legal enforceability, should we say, in terms of — we have guidelines that are provided to legislation. What is it that provided that certainty for yourselves in terms of the concern at the initial raising of the tax and then further becoming more pleased with the outcome that has occurred as a result of the guidelines?

Ms CUNICH — The guidelines clearly outline the government's intention, and if they are tabled in Parliament, that provides a reasonable amount of certainty around the intention. There was also an agreement that they would appear on the State Revenue Office's website so it was very clear to both the consumer and the industry what the intention of that legislation was.

Mr CANTWELL — The structure of the act was that the Treasurer can take into account any other relevant circumstance. I think the key issue with the guidelines was that they set out some of those relevant circumstances to provide more certainty to industry. On the face of it, that was really just a statement at large as to what might be a relevant circumstance, and by having a dialogue with industry it was able to actually get down to some more detail around what would be a relevant circumstance in terms of impacting the cost of housing to Australian residents and the like. That was then built into the guidelines, because you could see the direct relationship as to why that would be a relevant circumstance.

Mr CASEY — I think it provides a certain level of certainty for the industry, knowing that there are exemptions for those other circumstances which assist partly and fully foreign-owned corporations to be able to continue conducting that work as they have been over the past 60 or 70 years. I guess the guidelines are still something that will be developed further as we implement it, and if any implementation issues occur. We have been very cooperative with the Treasury, and they have been cooperative with us, so I think the continued open dialogue will ensure that those guidelines are implemented effectively to provide the outcomes that we are looking for.

The CHAIR — In terms of disclosure of who it is that is going to be exempt from these new taxes, do the Property Council or the UDIA have concerns about whether or not those exemption should or will not be made public? Does either organisation have a view on whether or not it is preferable that exemptions are made public or are not make public? The basis of the question really is around transparency and whether or not property developers would rather that all the cards were laid out on the table so that everybody is aware of what is happening — who is paying this tax and who is not paying this tax, rather than having questions about where exemptions are applied or not.

Ms CUNICH — We have not discussed that, but the property council's view on many other issues — and I cannot imagine it would change — is that there should be very clear transparency around the application of a tax. How is it dealt with at a federal level — or the intention at a federal level?

Mr PROUD — In terms of the annual programs, it is clear. Foreign corporations will actually have to pay a \$25 000 fee. That is what the annual program will be in the future. So there is an administration fee that is being paid, and everyone will be listed — everyone is visible, and that is clear. This does, in the guidelines, reference the annual programs for added transparency. Those annual programs are an indicator of who should be exempted. That is a very good way of detailing who is exempted and who is not. Looking at the federal sphere is again a good reference.

Mr PRADOLIN — Full transparency is the only way to go.

Mr CASEY — In the comments that were provided when the guidelines were developed we did say that there needs to be a certain level of transparency in the application and implementation of those guidelines so that the industry can be given a greater level of certainty on how it will be applied and how it will continue to be applied in the future.

The CHAIR — Just by way of context to that, this has been a subject of discussion today amongst a number of witnesses and there has not been any certainty provided about whether or not these will be disclosed. That was really the reason behind my question — to get your view on whether or not these exemptions should be made public, and I am pleased to hear your response.

Mr EIDEH — What will be the impact on housing prices when investors sell, if they have been charged higher fees?

Ms CUNICH — When a non-Australian resident has purchased a property and they then sell?

Mr EIDEH — Yes. What is the impact?

Ms CUNICH — The market will determine what price will be paid. That would just depend on how many properties are on the market at that time and where is that property located, I would imagine. You might be better — —

Mr PRADOLIN — The much more fundamental issue is that overseas investors can only sell to domestic buyers. They cannot sell to someone overseas, so I think the fee is irrelevant to the resale. It is irrelevant.

The CHAIR — Can you provide some clarification on that?

Mr PRADOLIN — Yes, sure. When an overseas buyer buys a property, they can only buy new. When they sell, they can only sell to locals. So from a supply point of view, it should put a downward pressure on pricing, which is positive for affordability.

Mr EIDEH — What other measures could be implemented to improve housing supply and affordability?

Mr PROUD — Build more homes.

Ms CUNICH — A lot more supply into the market.

The CHAIR — The opening of further residential land for development is — —

Ms CUNICH — Fixing the planning system. It is long, it is complex. Fixing the land. More land supply. The planning system. This is just one tax on property. There are a plethora of — —

Mr PROUD — I will table the solution to the issue of supply, which is developing a system —

Ms CUNICH — Yes, there is a 5-point plan there.

Mr PROUD — which is the development assessment report card, and from that respect we see that federally working with the states there are supply inefficiencies around planning and development assessment, and that is across the country. We see that there is a window of about 18 months of strong activity, which is the

development outlook we have, and we see that there is an opportunity for state governments, working with some efficiencies around rezonings, around independence of planning decisions, and we see that consistency across the states is where there is some work to be done.

We also see that there is a federal issue of housing affordability. Obviously building more homes is very important, but we need to not just rely on foreign investment, which currently is strengthening the market. We need to look at multifactor productivity, which comes from improving the development assessment pipeline. Getting rid of stamp duty, which is very topical today and something that we are strongly positioning as being an impediment to supply.

The CHAIR — Just to follow on from Mr Eideh's question, you spoke about land supply. What would have the greater net effect on housing affordability? Would it be fixing the land supply issues or the introduction of this new tax?

Mr CASEY — Fixing the supply issues would be a significant step forward. There are still some questions of what the true impact of foreign buyers is to buying out from Victorian families. There is not enough information there. Even the report from the federal government showed that there is a lack of consistent and adequate information out there. But most definitely I think the supply of land would be the most significant impact that you could have on housing affordability.

Ms CUNICH — I think you have to, not being flippant — but the assessment here across Australia — and there is at the beginning of this book a five-pronged approach to it — it is not one thing. Land supply is probably the most important, but it is fixing property taxes, it is fixing the planning system so that there is more and more property coming into the market and a diversity of property. It is not just about building on the outer fringe, it is about getting that diversity of product in that middle ring as well where there is an enormous amount of pressure on housing in that middle ring.

Mr CASEY — When I talk about supply, taxes and charges come into that. Being able to provide a new supply of housing can depend highly on how much the developer is being taxed and charged. We have been undertaking some greenfields research on the impact of tax and charges, and we saw that basically, of the total overall development costs, the taxes and charges can amount to a little more than a third of the overall costs.

The CHAIR — Mr Dalidakis?

Mr DALIDAKIS — No.

The CHAIR — No further questions?

Mr DALIDAKIS — I think that they have made it abundantly clear that they support the guidelines in the legislation as it currently is.

The CHAIR — Thanks, Mr Dalidakis,

Mr DALIDAKIS — No, actually I will have one; thank you for prompting me. In the testimony, Mr Proud, you noted that the response from the Treasurer's office was exceptional, which is always nice to hear. I am keen to understand, in respect to your dealings with the current government vis-a-vis a previous state government — you do not need to name which state government it may be — how have you found the interaction with this government in terms of this particular issue? Has it been more responsive, less responsive, as responsive? As I said, feel comfortable not to mention which state government previously you have had dealings with that you can compare.

Mr PROUD — On this issue, we have not had previous discussions with a previous government, or I have not had, personally, so it is hard for me to put any relative scorecard. But I will give you a scorecard on the development assessment systems of the country, as I have said, and we can look at those sorts of areas of where we have worked with the previous governments. That is not just a segue; it is the honest truth.

State governments do change and agendas change over a three to four-year period, and what we need to get behind is what was the previous government's ability and effect on an issue to get to longer term structural issues. That is what our federal government is trying to focus on. We need our federal government focused with the state government.

In terms of working with state governments, each government comes through and they do a bit. Our previous planning minister in this jurisdiction helped to create a lot of supply, which is vital to the housing affordability issue we face nationally. But what we need to do is make that supply continue for not just one or two years and not just have 200 000-homes start for one year, but to have 185 000 every year for the next 5 to 10 years.

Mr DALIDAKIS — Do you see this legislation as impacting on supply?

Mr PROUD — It is too early to really know how it is going to impact on the supply. What we need to do is ensure that investment continues to come in, and that is not just foreign investment, it is domestic investment as well. We need to ensure that we do not have impacts on investments through things such as negative gearing. And looking at the middle ring around Melbourne, if they quarantine negative gearing to new stock, that will inflate the price of rentals in that middle ring. There is a range of decisions that need to be made in the next year or two that will impact affordability for decades, and this is the opportunity maybe, with the strong activity at the moment.

Mr DALIDAKIS — I am sure you will get to lobby our federal parliamentary colleagues on that issue of negative gearing coming soon. Let me ask that question of you, Mr Pradolin, given that you come from effectively a property developer. In terms of your views about the impact to supply, is a 3 per cent surcharge on non-residents going to affect your supply curve going forward.

Mr PRADOLIN — As Nick said, it is too early to really tell, but our initial investigation with China is that demand will not stop.

Mr DALIDAKIS — So it will not hurt at this point.

Mr PRADOLIN — That is our initial, and again it is very early.

Mr DALIDAKIS — Sure, I appreciate that. Circumstances will change and you will be able to reflect, forecast with what is actual in time to come, and we will be able to look at it. The other question I want to gain some clarity about — I think all of you have expressed a degree of transparency in relation to Mr Morris's question about the exemptions provided, but I just want to ask each of you very clearly: are you comfortable with automatic exemptions being provided in terms of being publicly made available, because that was what Mr Morris's question was, in relation to your tax affairs? Because as best as I understand it, none of you are required to have your details provided for taxation affairs otherwise. I just want to make sure that you are all very clear about the question that Mr Morris asks.

The CHAIR — My question was directly about the exemptions under this new tax, not about any other.

Mr DALIDAKIS — Correct, I understand that, but they are not required to be listed for any other measure so I just want to make sure that we are very clear in terms of the testimony provided to the committee.

Mr PRADOLIN — From our behalf, there is no issue at all about transparency.

Mr VLITAS — AV Jennings, as a publicly listed company, would not have any concerns about that knowledge or information being in the general domain because basically the buyer would then have confidence that that company is exempt.

Mr PROUD — And again we would use the federal structure around the annual programs as the vehicle for visibility.

Mr PRADOLIN — Given that you have touched on affordability, I cannot lose the opportunity to make a point with regard to bipartisanship in planning. It is such an important issue that we need to put politics aside and get a strategy for this system irrespective of politics.

Mr DALIDAKIS — That is what Ms Cunich is for, to represent that policy parameter going forward. But on this side of the table I am sure we will continue to play the politics as we do.

The CHAIR — That was a lot of questions for someone who did not have any questions.

Mr DALIDAKIS — You prompted me.

The CHAIR — I should know, shouldn't I? Are there any further questions from the committee? Are there any further statements that anybody else would like to make?

Mr VLITAS — In terms of supply, just remember that like everything in life it is all about the supply that we bring on that reduces the cost. I think what was missed in this opportunity was probably having to look at housing affordability and how it could be impacted if you cut off supply. It was important that when the question was raised about the tax one thing we could point out to the Treasurer was the level playing field. Therefore, the unintended consequence was that you could actually impact on developers such as Australand, the AV Jennings, Mirvac. These major developers that operate in Victoria could have said, 'Let's not invest in Victoria, let's go and invest somewhere else'.

That is where we have to make sure that when we are looking at any tax it is the effect you have, because the unintended consequences could occur very quickly and supply, as happened in New South Wales, it turns off very quickly and it goes to other states. We had the benefit; let us not lose that benefit when we have got it in Victoria.

The CHAIR — I thank you all for attending today. It has been most insightful. Thank you for your openness and frankness. Mr Proud, that document you have there for us to keep.

Mr PROUD — I have more copies of the Development Assessment Report Card if you like.

The CHAIR — You do? I am sure all the members of the committee will be very interested to have a read of that. I will close the session there and thank you very much for your attendance.

Witnesses withdrew.

CORRECTED VERSION ONLY

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Subcommittee

Inquiry into the State Taxation Acts Amendment Bill 2015

Melbourne — 15 June 2015

Members

Mr Joshua Morris — Chair

Mr Philip Dalidakis

Mr Khalil Eideh

Mr Nazih Elasmr

Ms Colleen Hartland

Staff

Secretary: Mr Michael Baker

Research officer: Mr Anthony Walsh

Witnesses

Mr Craig Whatman, partner, taxation, and

Mr Andrew Clugston, partner, business advisory and assurance, Pitcher Partners.

The CHAIR — I declare open the Legislative Council economy and infrastructure committee public hearing. This hearing is in relation to the inquiry into the State Taxation Acts Amendment Bill, and I welcome Mr Whatman and Mr Clugston from Pitcher Partners. I am Joshua Morris, the chair of the committee. We have Mr Eideh, who is the deputy chair of the committee, Mr Elasmar and Mr Dalidakis here; we are a subcommittee of the committee that is undertaking this hearing today.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege.

All evidence is being recorded and you will be provided with proof versions of the transcript in the next couple of days. We have allocated 45 minutes for this session, and you have the opportunity at the start of the session to make any opening remarks that you should so wish. I would just like to remind you that this inquiry is in relation to how this bill will impact housing affordability amongst housing supply in Victoria. At this point I might throw it to you to make any opening remarks, and then we might go along the committee and have some questions. Over to you.

Mr WHATMAN — Thank you very much. Firstly, thank you for the opportunity to appear before you this afternoon. I am Craig Whatman, one of the tax consulting partners at Pitcher Partners, and Andrew Clugston is a business advisory partner. Pitcher Partners has a significant client base in the property and construction area, including a number of clients that will be impacted by the proposed surcharges. We have done a brief presentation if I might hand that around to the committee members.

The CHAIR — Yes, please.

Mr WHATMAN — What we did in preparation for our appearance at the hearing was just to seek the views of some of our larger clients that are likely to be impacted by the proposed measures, and the slides that appear before you are really a high-level summary of a combination of the views that they have expressed to us and also our own views as property advisors. Both Andrew and myself do practise predominantly in the property advisory area — it is probably exclusively your practice and predominantly my practice from an indirect tax perspective.

If I could just draw your attention to page 2, first of all, what we intend to cover. Firstly, just looking at the impact of the proposed measures on developers and purchasers, then moving on to more of the general comments around potential impacts on the Victorian economy, as we see it and as our clients see it, and then specifically addressing the terms of reference in terms of housing affordability and supply.

Moving on to page 3, the impact on developers and purchasers as we and our clients see it. It is clear that there are a number of significant developments that are currently being undertaken in Victoria, particularly in the Melbourne CBD and surrounds, by international developers. A number of those are our clients. It is clear to us that future acquisitions that they will make if this measure proceeds will be impacted by the surcharges, both in terms of their acquisition of development sites for future development and also in terms of their sales to offshore purchasers, particularly in the apartment market space.

What they have told us is that, to the extent they can, they will seek to pass on the costs of the surcharges to their customers. As with every developer, obviously they undertake feasibility to determine how they are going to cost their developments and the surcharges would form part of that feasibility and part of the costs that they would seek to oncharge. That will impact not just the international purchasers of their product but also the domestic purchasers of their product to the extent that they supply to the domestic market, and I will touch a bit more on that.

Other impacts that we can see potentially are restricted access to international equity for development projects. Post the GFC it has become much more difficult for our clients to get finance, for example, for their development projects from local banking institutions and others, and therefore some of them have looked offshore for equity — so joint venture partners, for example, to support their developments, acquiring the capital that they need to undertake those developments. It is possible that these measures could influence the international investors' willingness to invest in those projects. If the measures were to result in a decrease in sales of apartments, which we can see, particularly to the offshore purchasers, then that is going to impact the

banks' willingness to lend to some of these projects, because obviously they have presale requirements and a number of other measures that need to be met. If the market slows down and the purchasers decrease, then that could impact the banks' willingness to lend to the development market.

In terms of the local developers — I understand you just heard from the property council; obviously they were involved with the development of the Treasurer's guidelines and particularly looking at some of the domestically based developers — we can see an impact here not just within what we call the brownfield or the apartment type of development market but also the greenfield development sites. That is where you have the domestic development entities that have some foreign ownership and it constitutes a foreign controlling interest for the purposes of the legislation. Then obviously those developers are not selling predominately to offshore buyers, they are selling to the domestic market. We are talking about the development of the greenfield land sites in the growth corridors of Melbourne — that is not a market that the international purchasers are buying into, that is where the domestic first home buyers are purchasing their products.

That is where the guidelines come in. I am not sure whether you discussed with the property council in their previous submission the administration process of the guidelines, but we have a real concern around the administration of the guidelines. I think the guidelines are a step in the right direction, but based on our experience with other states in terms of the link between Treasury and the State Revenue Office on these types of matters, normally the administration responsibility is handed to the revenue office, which reviews the application and makes a submission to the Treasurer on whether it should be exempted or not in any particular case. The SRO's process — it only has a certain number of people who will be able to do this, and the timeliness of those decisions is going to be a very fundamental issue in terms of certainly our clients and their need to be able to make a decision on acquisitions of certain sites and whether they should proceed with certain developments. It is not something that can wait three or six months, for example, to go through an administrative process within the State Revenue Office. I think a fast-track exemption process would be something that we would be keenly seeking to lessen the impact on particularly the domestic developers who are going to be impacted by this.

Just focusing for a moment on apartments, it is clear that the stamp duty surcharge will significantly increase the cost of off-the-plan apartments. Just by way of a basic example, if you take an apartment with a selling price of \$500 000, if that got the maximum entitlement under the off-the-plan concession, the amount of duty that would be payable pre the surcharge would be approximately \$3000. Post the surcharge it is going to be approximately \$17 000 of stamp duty, so a more than 500 per cent increase in the stamp duty costs for the buyer of that off-the-plan apartment. Whether that impacts their decision on purchasing the apartments in Melbourne versus apartments in Sydney or somewhere else is yet to be seen, but certainly you can see that that is a very significant increase in the stamp duty costs that they will have to bear.

I will turn now to page 4 and I will hand over to Andrew.

Mr CLUGSTON — When we surveyed our clients we asked a number of clients, both domestic and international developers, what they thought of the changes. Probably one of the things that surprised us was to see that our local developers, who are not foreign owned in any way, had quite a strong negative view of the introduction. It is mainly around the impact it would have on their purchase of their completed homes or apartments.

The main concern was around a 3 per cent surcharge on new housing in particular. That was their concern, simply because some of our larger developers are now selling up to half of their apartments offshore. Even our local clients are doing that now, so their concern is that if developers from other states are aware of these changes, just the negative press that Victorian apartments will get. With the changes to stamp duty, as Craig said, if you say there is a 500 per cent increase in stamp duty, just the negative press that might get overseas has got them concerned. What that has tended to mean is that for some of our clients who were solely focused on Victoria, it has now given them cause to look elsewhere. No-one can really say whether it is going to impact the level of demand for foreign purchasers buying completed apartments, but it has got people concerned. Where they have never had a reason to look into other states, they now are. A few are now looking at Queensland in particular for some reason, whereas before they had been solely focused on Victoria.

Then if we look at the impact on Victoria and the economy, a lot of these international developers employ none of their own staff internally; they outsource everything. They outsource all the project management, all the construction, all the consultants to local businesses here in Victoria, including us. They do not employ any

accountants for their finance team; we do everything for them. So if suddenly these projects are shifting their focus from Victoria to other states, just the impact that has on local businesses. If we look more broadly at the Victorian economy, also just the impact that might have on payroll tax if there is more work shifted up north.

The CHAIR — Very good.

Mr CLUGSTON — Craig might just finish off.

The CHAIR — Anything further to that?

Mr WHATMAN — Sorry, one more, if you do not mind. Just focusing particularly on housing supply and housing affordability, it is clear as a general statement that apartments are the most affordable form of new housing at the present time. Again, it just comes back to the supply and demand equation, which I am sure you are going to hear a number of times today. If the amount of sales decreases, then that potentially leads to a decrease in future development activity, which means less available housing stock, which means increased prices at the end of the day. Whether that happens, it is probably too early to tell, but it does come back to supply and demand at the end of the day. That could be one of the impacts, that in fact we are not achieving what the government is seeking to achieve from this ultimately because it decreases the amount of housing stock available and the supply/demand equation gets out of whack. Therefore the prices go up for both domestic and international consumers.

In terms of what our clients see as the other factors that affect housing affordability, there is really a few that they consistently talk to us about. One is consistent access to developable land that transcends the government of the day, so really that is about maintaining a consistent supply of land that is able to be developed. Whether it is on both sides of politics, so irrespective of who is in government at any particular time, it is maintaining that consistent supply available.

The planning process is obviously a significant one for them, and once again they just talk about having an efficient or a more efficient planning process. Certainly there has been some work done over a number of recent years to try and improve that, and I think there have been some improvements made. I think there is more work that could be done in that area. One particular area of focus perhaps at the moment is the revised zoning laws that came in several years ago that are now being administered by the local councils. Anecdotal evidence that we are hearing from our clients is that there is a very inconsistent approach among the local bodies to the administration of those zoning laws, and what that is leading to is a very inconsistent decision-making tree, if you like, for the client in terms of whether they can go to one area and develop an apartment block versus another area of town. And there are all kinds of interest groups that are involved from that point of view.

Then in terms of other potential ways in which affordability could be increased, access to the first home owner grants and the stamp duty concessions is an obvious one. Then particular incentives, whether it is tax incentives or other incentives to encourage the development of more affordable housing is another area that we see as something that could be looked at. That was it, thank you.

The CHAIR — Fabulous, thank you. We might move along the subcommittee for a few questions. I might just kick off in terms of, you spoke about the State Revenue Office reviewing applications and that being an area of concern. Is there anything that could be done, do you think, to ensure that these reviews do occur in a timely manner? Is there a mechanism that could be put in place to ensure that developments are not held up?

Mr DALIDAKIS — Good question.

Mr WHATMAN — Absolutely. It is an area where I think there has to be a certain level of resourcing allocated to it within the State Revenue Office. I was at a State Taxes Consultative Council meeting earlier this week where I asked that question, and it appeared that no thought had been given as yet as to how this process was going to be administered within the SRO. In fact the answer was that they were not even sure whether they would be the ones administering it.

If you look at South Australia as an example where you have a Treasurer's discretion in relation to stamp duty corporate reconstruction relief, that is a Treasurer's discretion but the South Australian revenue office is the administrator of that discretion and makes the recommendation to the Treasurer. I really cannot see the

Treasurer or his staff directly reviewing these applications themselves. I am sure the Treasurer does not have the time or the resources to be able to do that, so it seems reasonably clear to me that is going to end up in the SRO.

The issue with that is that the SRO is already very busy doing lots of other things, and in terms of the turnaround time for some of those things, we are talking 6, 12-plus months to get responses on certain applications. If that happens in this case, I think we are going to have a serious practical issue in terms of the application of these guidelines.

The CHAIR — It could be disastrous, absolutely. In South Australia you are talking up to a 12-month wait?

Mr WHATMAN — It can be, yes.

The CHAIR — Quite significant. In terms of apartments, you were talking just before about apartments being a very affordable type of housing stock. From my understanding, it is quite often foreign investors that often buy off the plan and buy early in the development of apartments. If that early purchase of off-the-plan apartments was to fall away as a result of this measure, what impact is that going to have on future developments?

Mr CLUGSTON — The concern is that a lot of the developers will struggle to get funding. There are presales requirements that the major banks impose on development funding, so they have got to achieve generally at least enough presales to cover the debt in full, plus another 10 per cent for the GST, before the bank will start lending on the construction facility.

The CHAIR — Could you say that again? What was that?

Mr CLUGSTON — Normally, say, if there is a \$50 million construction facility, they will need to presell \$55 million worth of apartments — being \$50 million debt cover, plus another 10 per cent GST — before the bank will start lending on the construction facility.

The banks have been relaxing the number of foreign presales that they will count towards that qualifying presales target, so more and more developers are selling off the plan overseas and having that counting towards their qualifying presales for their construction finance. It is just going to mean a delay in obtaining the finance or a change in strategy where they have to sell more locally early on, if the market supports that at the current prices, or maybe — who knows? — discount potentially to get the local presales over the line to qualify for their bank funding.

The CHAIR — In terms of the new taxes, we often hear about business just wanting certainty. Has this provided certainty or has it caused uncertainty within the development sphere?

Mr WHATMAN — I guess from a general state taxes point of view, none of our clients look for new taxes being introduced, or none of them think that is a good idea, but beyond that I think that the level of uncertainty is around those that are affected by the exemption guidelines, in terms of how that is going to work. Obviously they are quite general guidelines, and a fair amount of subjectivity perhaps might come into the application of those guidelines. I think that has created quite a degree of uncertainty for those developers that will be impacted by that, in terms of on which side of the line they are going to fall at the end of the day on the Treasurer's discretion. And then beyond that it is really the uncertainty as to what Andrew was talking about in terms of if the level of purchases starts falling away and therefore the level of available finance starts falling away, how does that impact in terms of your future decisions whether to invest in Victoria or to go to Queensland?

You had the Queensland government come out within a day of this announcement saying, 'Come to Queensland; we are not going to impose this tax'. Obviously that is all marketing, but the clients do think about those things. They put everything into the pot, they stir it all around and they decide whether they are comfortable with Victoria or whether they will go elsewhere in terms of these development projects.

Mr EIDEH — Just a quick question. In your view, do you think the 0.5 per cent land surcharge prevents land banking?

Mr WHATMAN — The land tax surcharge?

Mr EIDEH — Yes.

Mr CLUGSTON — Certainly my clients have not expressed any concern with that surcharge. Generally because they are developers, they will only hold the land for two years, three at the most. I think probably the land tax is going to have more of an impact on long-term hold investors rather than property developers. It is more the stamp duty that is the issue, rather than the land tax, for developers anyway.

Mr EIDEH — In your view, what other measures could be implemented to improve housing supply and affordability?

Mr WHATMAN — They are really the measures that I outlined on page 5 of the slides here, which is, firstly, consistent supply. I think that is the main one. I think you have probably already heard that today as well. There needs to be a consistent level of supply across a number of years to ensure that there is enough access to land for developers to keep developing, which ensures that there is a set level of stock available on the market, and that is one good way of keeping prices as low as possible. The planning process is another important one. We live in a very regulatory-based environment. All of the development community has to jump through a number of hoops, mostly for good reasons but in some cases perhaps there are multiple layers of doing the same thing as part of the planning process when you are dealing with five different agencies who all have different requirements. I think, as far as we can, streamlining the planning process, speeding up the approval process for permits, are all measures that our development clients would be looking for.

Mr ELASMAR — Talking on the impact for foreign investors, can you elaborate more? What would be the impact?

Mr WHATMAN — On the apartment purchasers' side, really it is the cost of buying the apartments. The decision will be whether they want to continue buying an apartment in Victoria that has got a \$17 000 stamp duty cost attached to it rather than a \$3000 stamp duty cost or whether they start looking to apartments in Sydney or Brisbane or Perth et cetera. That is the potential impact from their point of view. In terms of our developer clients, it is more about do they start doing projects in Victoria or do they start looking elsewhere to undertake their development projects.

Mr DALIDAKIS — I get a distinct twang. Obviously you have, I presume, come from New Zealand — —

Mr WHATMAN — Correct.

Mr DALIDAKIS — But you chose to live in Melbourne. Can you explain to me how you chose to live in Melbourne when it is such a high-priced society to live in?

Mr WHATMAN — Firstly, I have been in Australia for almost 15 years and I am an Australian citizen as well as a New Zealand citizen, but thank you for the question. When I moved here it was just prior to the introduction of the GST and I was recruited specifically for GST implementation. I spent six months in fact in Telstra on GST implementation, so really it was around the opportunity for my working career more than anything else that I made the decision to — —

Mr DALIDAKIS — I guess the point, if I can tease it out, is that the cost of living is much lower in Adelaide, or it was, Tasmania — anywhere in Tasmania actually. They are both beautiful places, so I do not want Hansard to think that I am being nasty about other places in Australia, but the point is that there are always going to be differentials in charges or costs incurred either in the cost of living or in terms of the cost of doing business, so is this as significant as you make out in terms of businesses transacting here in this jurisdiction?

Mr WHATMAN — I think it is too early to say the answer to that question, but certainly we can only base it on what our clients are telling us, and our clients are telling us that they will have to factor these charges into whether they do start their development projects in Victoria or whether they start them elsewhere. I think only time will tell whether that translates into them making a decision to go elsewhere.

Mr DALIDAKIS — Can I just indulge you, Chair. Do I seek this document to be tabled as part of the Hansard hearings? Do I need to move that? I just think it is important, given that this is a presentation being provided, that we note it, that is all.

The CHAIR — It is so done.

Mr DALIDAKIS — Thank you. You mentioned your clients. I am keen to find out: are you in a position to talk about who your clients actually are? We just had the property council in and it had Australand and AV Jennings here. So I am keen to understand, because — again my colleagues should correct me if they think that I have misrepresented the testimony before us — they argued that they were very comfortable with the legislation as it currently is, with the guidelines as they were released, and saw no fear of impact on their construction or their development plans going forward. I am keen to understand what type of nature of your clients are we talking about: big, small, indifferent et cetera?

Mr WHATMAN — Firstly, we do not have authority to mention names in terms of clients, but perhaps if you would like to give an overview of the types of clients that we work with.

Mr CLUGSTON — Yes, sure. Our international clients are quite significant property developers, mainly developing here in Victoria but also they do have projects in other states, and they are doing quite large residential apartment towers — 500, 600, 800-apartment towers — so quite significant projects. Mainly residential, but then quite often they will also acquire other investment properties as well as a bit of an income stream, so retail complexes, office buildings. Investing hundreds of millions of dollars into the property market here in Victoria. In terms of locally, we have selected a cross-section of developers — mainly the larger ones, who tend to do apartments but also house and land packages out in the outer suburbs and other townhouses and medium-density developments.

Mr DALIDAKIS — Again, not wanting you to disclose client details that you are not authorised to, but are we talking about the size of, for example, Central Equity or we talking smaller than that? That is what I am trying to understand — the type of size of the clients that we are dealing with.

Mr CLUGSTON — Probably not quite the size of Central Equity, but fairly significant. They are producing, you know, hundreds of new houses every year.

Mr DALIDAKIS — Are we talking about houses or apartments or a mixture?

Mr CLUGSTON — A mixture — it is townhouses, house and land packages, apartments, everything.

Mr DALIDAKIS — As we have seen, on an average house of about \$500 000, it is about, on average, \$15,000. I think Mr Whatman suggested it was just under \$14 000 — between 503 to 517 but, rule of thumb, \$15,000. Is your testimony before us that that \$15 000 on average per \$500,000 has the potential to be a serious impact on the decision-making of your clients in the construction of their projects? Bear in mind that there is only often a limited number of those apartments that are often sold overseas or to ‘non-residents’, as the term is applied to this legislation.

Mr CLUGSTON — It is just too early to tell for sure. All we can say is that our clients are concerned that it might be, and so to plan for the next project they need to start early. As I said before, it has given some cause to start looking at other states, whereas otherwise they would never have thought to. Whether that is an overreaction and whether they end up investing in other states, who knows. But it has got them concerned — that is all they are saying at the moment. We do not know for sure.

Mr DALIDAKIS — Again we are talking anecdotal at this point, but that is understandable. The legislation has been proposed — it has not actually been passed and implemented.

I have got a number of questions to come still. Mr Whatman, you mentioned that you had a concern about the administration of the legislation, and I think you said last week you raised it with SRO officials. Have you had any experience previously where the SRO has been responsible for administering a part of the legislation, be it stamp duty or otherwise, where their tardiness has caused you or your clients concern going forward?

Mr WHATMAN — The SRO has responsibility for administering a number of parts of the stamp duty legislation as well as the land tax legislation. In some cases applications for certain things can take a significant amount of time. As I said, I think it is a question of resourcing. I am not having a go at the SRO here. They only have a limited number of staff and therefore a limited capacity to turn things around. Unfortunately, sometimes that does not line up well enough with the commerciality of the transaction and the timing issues that our clients face.

Mr DALIDAKIS — What is the typical lead time for a construction development from beginning to financing to planning to construction? I presume that as part of this process it is quite possible that in fact as your application goes into the SRO you could actually have a great period of time prior to the construction of the development.

Mr WHATMAN — What we are talking about here, though, you must remember is the acquisition of a particular site and therefore whether you are paying the additional surcharge in relation to the acquisition of that piece of land.

Mr DALIDAKIS — Again, feel free to correct me if my understanding of the legislation is not correct, but my understanding is that the effective implementation of that surcharge is at the end user if they are a non-resident, and that is why the exemption can be sought, so that it is actually not picked up by the non-resident corporation, trust et cetera that is undertaking that construction.

Mr WHATMAN — Correct, but at the time they acquire the land, if they believe that they may be caught by the 3 per cent surcharge, they need certainty on whether that surcharge is going to apply to the development because that is one of the costs that they have to feed into the feasibility model.

Mr DALIDAKIS — Explain to me how it is your interpretation that they would then get caught up in that application, given that if they sell to residents or citizens, they do not need to pay that 3 per cent on that transaction and they only need to pay it if they sell to non-residents. It can only be if they do not get an exemption, but they get an exemption by the Treasurer, under the guidelines, if they undertake that course of action I have just described.

Mr WHATMAN — I am not sure if I am completely understanding the question, but to give you an example, if you are talking about a greenfield developer, it is a local development entity. We are talking about the types of entities, for example — one or two that we act for would be competing in the Australand/Stockland-type of market. They are not our clients, but that sort of market. They may have ownership within their structure which means they have a foreign controlling interest and therefore technically they are caught by the terms of the legislation. But within the bounds of the Treasurer's guidelines they have the ability to apply for an exemption in respect of their next acquisition of greenfield development land and to determine whether they will be subject to the surcharge on that exemption. At that point they need to know before they settle the acquisition of that site, before they are committed to buying that site, whether they will or will not in fact be subject to the surcharge.

Mr DALIDAKIS — It is good that we use Australand as an example because they testified just prior to your arrival. They were not only very relaxed about the legislation and the guidelines before us, and being effectively a non-resident-controlled entity, given their shareholder structure, I think they fit the example that we are discussing perfectly. One of the things they said clearly on the record was that if they were successful in seeking the exemption from the Treasurer, they would be very happy to have that disclosed on the public record. Given that you are reluctant to talk about who your clients are — you know your clients best in that respect — would they be equally as comfortable having their details publicly available as receiving an exemption?

Mr WHATMAN — We have not discussed that issue with them, but I think the honest answer is that some of those clients may have a concern about having their records declared on the public record. Part of the reason for that, to put some context around that, is that we are talking about clients from Malaysia, Singapore who are not used to dealing with governments of the same type as the Victorian government or the commonwealth government of Australia. They have different factors within their own country that they have to deal with in terms of the way that they work and therefore they are not as used, perhaps, to having such an open and transparent system in terms of the — —

Mr DALIDAKIS — I suspect the issue of transparency would be a very different conversation if we were in Singapore or Malaysia, and I ask you if you can take that question on notice. You will have an opportunity to respond within a number of days when you get the Hansard. If you can speak with those clients, without disclosing who they are if they do not want to, but to better inform the committee as to whether or not they would be comfortable having their details on the public record, à la the testimony from the property council before you.

You claim that your concern is that the surcharge will significantly increase the cost when we agree that, on average, for properties selling for \$500 000 we are talking about \$15 000, give or take. And you talked about the nature of the supply curve. I am very interested in your view or definition that by the very nature that if the cost is increased, then obviously the demand will decrease, because when I did my economics — and I have got a masters of commerce — the natural supply curve would be that if demand is low, then of course the price drops, but your testimony was in fact that if demand was low, the price will go up. Have I misunderstood your testimony before us?

Mr WHATMAN — No, you have not misunderstood. There are a number of factors that go into the supply curve and the supply/demand equation. Given the limited time that we have — we could probably spend the day talking about that issue itself — but in terms of what I was trying to say, if in fact the increase in the cost does deter people from purchasing the apartments and therefore that leads to a decrease in the developers' appetite to actually build the apartment buildings in Melbourne, then you have, as a result of that, in five years, if you like, a decrease in the level of available stock that is available to the general public, both domestic and international purchasers. If that level of stock gets to such a level where people are competing against each other to buy the next apartment, then that is going to increase prices. That will be the outcome of that equation.

Mr DALIDAKIS — If I have understood that correctly, if prices drop, that might be a bad thing? Because that is not what the federal Treasurer said last week or the Prime Minister when he said that he likes his housing price in Sydney going up because it is better for him when he sells in the long term. I am trying to clarify and better understand — —

The CHAIR — I do not think that is what the Prime Minister said.

Mr DALIDAKIS — I am happy for him to write in to the committee to correct the record. I am trying to better understand that under the supply curve, demand drops, prices go up, the net effect is that it hurts the availability of stock — that it leads into that stock reduction. Is that sort of where you were going?

Mr WHATMAN — Yes.

Mr DALIDAKIS — Okay, great. Again I refer back to the property council testimony. They were very comfortable with the guidelines as they were presented in terms of the process. I want to come back to this. I am naturally concerned about your testimony that you fear that the length of time in the administration is something that will hurt your clients, because that was not an issue raised by the representatives before. I need to better understand why you are so concerned with the tardiness, potentially, of the SRO, because the very nature of the guidelines — and you will be used to getting guidelines from tax departments both state and federal, and you would be well inclined to understand that the guidelines are effectively what gives you currency, in terms of the transactions and the dealings that you have. I do not quite understand your concern on behalf of your clients. I am not sure whether I have misunderstood or whether there is a better way of, I guess, providing that advice.

Mr WHATMAN — What I was trying to say was that certainly the guidelines, I think I said, were a step in the right direction. I make that point first. Without the guidelines there were serious concerns around the impact of these measures on particularly developers who are active in terms of the local sense, that are predominantly local developers but have some foreign ownership within their structure. So the guidelines are definitely a step in the right direction at a theoretical level, but someone has to administer the guidelines and these projects are driven around commercial deadlines which sometimes do not line up with the administrator's deadlines and ability to produce decisions on applications of this nature in a timely manner or in as timely a manner as our clients would like. That is really a concern. It is around the timeliness of the review of the exemption applications to enable clients to make effective and informed commercial decisions at the time that they need to commit to the acquisition of development properties.

Mr DALIDAKIS — Thank you, Chair, you have been very generous; I have just got two more questions. The first one is: why is it that Pitcher Partners are appearing before us but none of the big four are?

Mr WHATMAN — Pitcher Partners was invited to appear before the committee is the short answer to that question. I believe that that invitation came through one of your research assistants identifying an article that I had written on the bill when it was first released.

Mr DALIDAKIS — Prior to the guidelines being released?

Mr WHATMAN — Prior to the guidelines being released.

Mr DALIDAKIS — Does the Institute of Chartered Accountants or the CPA have a view on this legislation at this point, or are you aware of either of your roof bodies expressing a view?

Mr WHATMAN — I am not aware and have not had direct discussions with either of those bodies.

Mr DALIDAKIS — My last question for you is: by virtue of the fact that you are a taxation partner, your role as per a client is to minimise the tax that they pay — legally, by the way; I am not insinuating anything other — and I am keen to understand that when they approach you on this issue, given that the surcharge gets passed on to the end consumer, what is it that they are fearful of?

Mr WHATMAN — First of all, our role is to provide the best commercial advice to our clients. Tax is one aspect of that, and although I am a taxation partner I am also a property advisory partner, so we look at this in the context of the whole commercial needs not just in a taxation context. In terms of their concern, really it is about the impact of the surcharge on the appetite for people to buy their product and therefore their ability to keep investing into Victoria and keep producing the sort of development activities that they are currently undertaking in Victoria.

Mr CLUGSTON — Probably their other concern is that they might have to cover the cost of that surcharge. The apartment market is pretty keenly priced, and for them to simply pass on another \$15 000 on the same apartment on 1 July is not necessarily going to happen, so their profit margins are potentially going to be diminished by this.

Mr DALIDAKIS — Correct me if I am wrong, it is only if the contract was entered into post 1 July, so if they have entered into a contract but have not settled, they are not caught up in this legislation as is.

Mr CLUGSTON — No, that is right, but the feedback we are getting is that some have potentially committed to acquiring a site and they have done their feasibility on a particular scenario and by the time they undertake their marketing campaign in July or August, things have changed and now there is suddenly a 3 per cent on-cost.

Mr DALIDAKIS — I am not a marketing expert, but I would have thought the ability to sell apartments and/or property in the next two weeks at a saving of that surcharge would be something that I would dare say that your clients would probably be advertising right now.

Mr CLUGSTON — They are if they can. Some cannot because they are just not ready yet to start their marketing campaign.

Mr DALIDAKIS — So in actual fact the state of Victoria is missing out on taxation revenue as a result of generously providing a transition period of 1 July. If we had used it from the date of the announcement at the time of the budget being delivered, that would have stopped people trying to gain the system prior to 30 June's expiration. That is just what you said.

The CHAIR — Which would also require retrospective legislation.

Mr DALIDAKIS — No, it would not actually, because it would come into force at the time the budget was handed down. But you agree that there are some clients that are using that pre-30 June deadline as a way of trying to engender greater sales right now?

Mr CLUGSTON — It would be logical if they are. No client has actually specifically told me they are doing that.

Mr DALIDAKIS — I thought that was your testimony. My apologies.

Mr CLUGSTON — No, just to clarify, it would be logical if they are doing that, but none of my clients have specifically said they are bringing forward marketing campaigns. They happen when they are ready and they try to sell as soon as they possibly can.

Mr DALIDAKIS — Could I ask you to take that again as a question on notice and speak with your clients and find out if any of them have attempted to use that as a way of selling existing stock that they have got off the plan?

Mr CLUGSTON — Yes, sure.

Mr DALIDAKIS — I would be interested to find out from your clients' perspective.

Mr EIDEH — In your view, what is making foreigners invest here if they are non-residents? On what basis?

Mr WHATMAN — Why do they want to invest in Victoria?

Mr EIDEH — If they are non-residents and they are not living here in Australia, why are they investing here?

Mr DALIDAKIS — Because they want to get their money out of Greece. They are worried about the system collapsing.

Mr ELASMAR — Because it is a good state.

Mr CLUGSTON — Generally the feedback is that Victoria has a sound economy and it is a safe place to invest. It has a great name in terms of investment in property. Sometimes it is a trophy asset. There are a whole lot of different reasons for why investors like to buy in Australia, but they quite often like to be able to say they have got an apartment here in Melbourne and either they rent it out or they come and stay here from time to time for holidays. They can brag to their friends they have got an apartment on a particular street in Melbourne. There are a whole lot of different reasons for why they buy an apartment here. Sometimes it is sound investment; other times it is for staying in themselves.

Mr EIDEH — Is what is happening that they want to be granted a visa to stay here? Is that why they would invest?

Mr CLUGSTON — I am not hearing of any coming or buying here to be granted a visa, no. It is more that it is a safe place to invest. It has had a strong property market for a long time. Quite often they have studied here in the past or their children are studying here so they are familiar with Melbourne and understand all the locations, so it is attractive to buy here as opposed to somewhere else that they are not familiar with.

Mr DALIDAKIS — We are a safe place to park their money.

Mr EIDEH — It is good to hear that!

Mr DALIDAKIS — I have got one more question.

The CHAIR — Of course you do!

Mr DALIDAKIS — Of course I do. I just want to tease this one issue out: when my wife and I purchased our residential property some five years ago, we factored in the cost of stamp duty as to our total purchasing price, what we were able to afford based on the bank side of things of course and also from our personal repayments side. My question to you is that when your clients look at the cost of doing business and the transactional cost, and they incorporate that additional 3 per cent surcharge only for non-residents — and remember that it is a small component for some builders, and I acknowledge that you have implied that it is quite large for some of your clients — given that we are talking about 15 grand per half-million-dollar investment, are we implying that as a result of that price point it scares the non-residents away? Again you might like to take that on notice and have a better discussion with your clients rather than respond now. It is up to you.

Mr WHATMAN — I do not think our clients know the answer to that question yet. We will probably know the answer to that in two, three, four, five years time. If we have another hearing, perhaps we can answer that question then, but at the moment I think that is one of the uncertainties. What it does do, though, is it gives those investors the opportunity to look elsewhere. Where they may have been focused, as Andrew said, on Melbourne for a number of other different reasons, they may now have the cause and opportunity to say, 'Well, hang on a

minute, if Melbourne, Victoria, is going to charge me an extra \$15 000 of stamp duty, should I in fact look at Sydney or somewhere else?'.

Mr DALIDAKIS — So then what I ask you to take on notice is that your clients will know the profile of the people that they sell to predominantly. They will know the type of financial assets and background professional expertise of the people they target in those sales processes, and I would be very keen for them to share with you and the committee that type of profile so that we can better understand whether we are talking about people who are struggling to make ends meet back in Malaysia but looking to try and get some money together for their son or daughter down the track, or are we talking about people who are potentially multimillionaires who will be able to absorb the 3 per cent surcharge? Your clients will know the profile of the people they try and sell to, and I would be keen to understand from them — obviously keeping confidentiality aside — the type of profile as well so that we can better understand that in looking at the legislation.

Mr WHATMAN — Sure.

Mr DALIDAKIS — Excellent. Thanks.

The CHAIR — Thanks, Mr Whatman. Thanks, Mr Clugston. I will close our hearing there and thank you very much for your attendance today.

Committee adjourned.

Economy and Infrastructure Committee

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