**STAMP DUTIES (CONCESSIONS) AMENDMENT BILL 1994**

**Legislative Council, 13 April 1994, page 445-6**

Second reading

Received from the House of Assembly and read a first time.

**The Hon. K.T. GRIFFIN (Attorney-General):** I move: That this Bill be now read a second time.

 I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

* As part of its Rural Policy commitments the Government announced that it would provide stamp duty exemptions for:-
* intergenerational farm transfers;
* rural debt refinancing;
* tractors and farm machinery.

This Bill seeks to amend the provisions of the Stamp Duties Act 1923 to provide those exemptions and to implement one further measure which will ensure that multiple duty will not arise for persons who carry on a rental or hiring business in more than one State.

In relation to intergenerational farm transfers a stamp duty exemption is proposed for the transfer of land used for primary production from a natural person (or a trustee for a natural person) to a relative of the natural person (or a trustee of that natural person) where a business relationship existed between the parties prior to the conveyance.

It is proposed to define the scope of "family unit" as situations involving:—

 (a) father/mother to son/daughter relationships or grandchildren of the father/mother; (b) brother/sister;

(c) the spouses of (a) or (b);

(d) subject to certain criteria to ensure tax avoidance/evasion does not occur a trustee for the above mentioned persons will also be eligible, although transfers involving company structures will generally be ineligible.

 In all instances it will be necessary for the parties to satisfy the Commissioner of Stamps that a farming relationship existed between the relevant transferor and transferee before the conveyance to ensure that the conveyance has not arisen purely from a tax avoidance scheme.

The concept of "farming relationship" would include any previous employment relationship regardless of the amount or form of remuneration, share farming arrangements, level of previous assistance rendered to the business, partnerships, etc.

It will also be necessary to define "land used for primary production".

 It is proposed that this concession operate prospectively for transfers executed on or after the date of assent.

The basic concepts of these proposed amendments for farm transfers are the same as those already applying in Victoria.

In relation to the exemption for certain loans refinanced by Primary Producers it is not proposed to exempt farmers from all mortgage stamp duty.

The concession will only apply to the amount borrowed under a mortgage which is used to "pay-out" another loan.

For example, if $200 000 was advanced under a mortgage and only $100 000 was needed to pay-out an existing loan the "new" mortgage would be exempt as regards the first $100 000 advanced only and duty at the rate of 35 cents per $100 would be payable on the remainder.

It is also proposed that the mortgages be over the same, or substantially the same, land or assets by the same mortgagor/debtor. The requirement that the same land or assets be involved ensures that only genuine refinancing to achieve more favourable terms receives the benefit of the concession.

In such cases the same land would be used as security since the use of different land or assets as security would indicate the arrangement is an entirely new one and not a refinancing.

A reference to "substantially the same" is intended to negate any argument where there is a minor change to the land to be used as security between the dates of the earlier mortgage and the mortgage in respect of which a concession is claimed such as in circumstances where the financial institution might demand additional security over realty or other assets.

The concession will apply to all farm mortgagors but excluding public companies and their subsidiaries (as defined under the Companies (South Australia) Code).

It is proposed that the concession operate prospectively for loan agreements or mortgages signed on or after the date of assent.

It is also proposed to amend the Act to exempt from stamp duty, applications to register tractors and farm machinery to ensure that farmers can obtain a registration document that allows farm machinery travelling on public roads to be covered against third party claims.

This initiative is consistent with the move towards the preferred option of the National Road Transport Commission that will require the registration of all vehicles that require access to the road network.

The last matter dealt with by the Bill seeks to amend the rental duty provisions to provide a credit offset for duty paid in other Australian States or Territories.

As the Act now stands a leasing transaction may create a liability for rental business duty in more than one jurisdiction. This is neither fair nor equitable.

The proposed amendment will further advance the degree of equity and harmony between stamp duty legislation administered by the various jurisdictions and will ensure that double duty is not paid in respect of certain leasing arrangements.

The relevant industry body has welcomed this initiative.

This Bill deals mainly with fulfilling the Governments Rural Policy commitments. The rural sector has withstood a number of economically debilitating situations which have affected its ability, not only to generate growth for the South Australia community, but also to survive until better times arise.

The proposed concessions will meet the rural sector’s very basic need for relief and will assist the State’s turnaround to economic growth.

The Government has consulted with the relevant industry bodies on the measures contained in this Bill and has appreciated their contributions