

28 October 2009

# Tax Laws Amendment (2009 Measures No. 5) Bill 2009

## Main Committee - Second Reading

**Mr BRADBURY (Lindsay) (12.32pm)** — In following the member for Gippsland, I acknowledge his very strong advocacy for the constituents of his electorate. I acknowledge the representation that he has given them through what has been a very difficult period, having faced the bushfires earlier this year and the great challenge of reconstruction that has followed. I will speak more specifically about that in relation to schedule 6 of the [Tax Laws Amendment \(2009 Measures No. 5\) Bill 2009](#) later on. I do not intend to speak on each of the schedules of the bill, but I will be speaking on schedules 1, 3, 4, 5 and 6.

Beginning with schedule 1, the proposals that have been brought forward in relation to the GST and representatives of incapacitated entities, I note that these are amendments that have been precipitated by a Federal Court decision which determined a matter in such a way as to render the outcome contradictory to what was the stated intention of the GST legislation when it was first introduced. That legislative intention is given effect by the comments that were made in the explanatory memorandum at the time.

It is a timely reminder of the importance of ensuring that, while an explanatory memorandum can play an important role in providing some additional context and some additional guidance as to the intention of the legislation, it never takes on the force of law in its own right. This is something that draftspeople have to be eternally vigilant about, and this particular case does highlight some of the difficulties—where the messages being sent out in the explanatory memorandum can, in fact, be contradictory to the letter of the law contained within the act itself.

In relation to the judgement that has given rise to these particular amendments, that was the case involving PM Developments and the Deputy Commissioner of Taxation. I note that in handing down the judgement Justice Logan was critical of the explanatory memorandum to the goods and services tax act. The explanatory memorandum stated, at paragraph 6.271, if you are registered and you become bankrupt, or go into receivership or liquidation, the person who conducts your enterprise on your behalf is, generally, personally carrying on the enterprise.

In addressing that part of the explanatory memorandum, Justice Logan said:

The statement in para 6.271 of the explanatory memorandum as to who carries on an enterprise after bankruptcy, receivership or liquidation is true only of bankruptcy. It is not true of corporations who are placed in liquidation. Neither is it true of a privately appointed receiver.

He then goes on to say:

Such errors hardly, with respect, inspire confidence in the utility of the explanatory memorandum. The description in the explanatory memorandum is not matched by the language employed within Div 147 as enacted.

That serves to amplify the point that the use or the utility, the benefit, of the explanatory memorandum and the guidance that it purports to provide to taxpayers, to advisers and ultimately to courts, is only useful to the extent that it is not seek to derogate from—or undermine or contradict—the written word of the act itself. I think that, whilst this particular set of amendments does seek to restore what may have been generally understood to have been the position, as I indicated earlier, I think it does serve as a useful reminder of the importance of maintaining complete and utter care in the way in which an explanatory memorandum is drafted, because of the particular significance these documents can take in guiding those—particularly in the tax field—in advising clients and ensuring that taxpayers understand their obligations and are able to set about diligently trying to observe them.

That is the only comment I wish to make in relation to schedule 1 but I support the proposals. In relation to schedules 3 and 4, I want to offer a few general comments. In relation to schedule 3—the Helping Children with Autism package—whilst I note that this particular schedule exempts from income-tax those payments made under the outer regional and remote payment, I do acknowledge that the package is one that has delivered considerable benefits to families and communities right around the country. I know that it has been very well received in my local community. Autism presents a great challenge, in particular to the families of children who are given a diagnosis. The Helping Children with Autism package is principally designed to provide that assistance, so that early intervention services can be obtained and secured. The research is very clear that early intervention services can have a profound impact on the outcomes in terms of the extent to which the child might improve their functioning within the community.

It is important that we continue to invest in providing support to families who—I must say, in my community—have limited access to the services they need. Notwithstanding those limitations, one of the largest limitations is the capacity to access those services financially, whether it be for speech therapists occupational therapists or for music therapy.

There is a particular issue with music therapy because within my electorate the Nordoff-Robins Foundation has provided considerable funding over the years for the Golden Stave Music Therapy Centre, which is located at the Kingswood campus of the University of Western Sydney. The music therapy that is provided—not just to children but teenagers and adults more generally, even some elderly people—can play a very important role in providing some of the therapeutic components to the overall strategy that one might employ in trying to assist a person with autism. Unfortunately, some of those services traditionally have not been of the type of service that would be considered as being eligible to be funded under these sorts of packages. That is something that I would like to see further work done on for people who are accessing those services, and ensuring that some of those music therapy services are in fact delivering benefits that are just as great as an occupational therapist or a speech therapist for a child that has autism.

Recently I had the opportunity in my electorate to support a very worthy cause that I have mentioned before in this place, and that is the Luke Priddis Foundation. It was established to provide services and assistance to families that have children with autism. Just a couple of weeks ago I attended their annual fundraising event at St Marys Leagues Club. It was a trivia night and I am pleased to report to the House that my table came second by a quarter of a point—it was one of those four-point answers that brought us undone in the end. It was a great night, not just because of the entertainment and the fun that was to be had on the evening, but because of the money that was raised for a very good cause. I do wish to acknowledge Luke and Holly Priddis and the entire team at the Luke Priddis Foundation for the great work that they do—not just in raising funds but most significantly in raising the profile of autism and the need for autism-specific services in Western Sydney. I take my hat off to the Luke Priddis Foundation. I wish to thank them for a good night and for the great work that they do within our community.

On the night Emma Husar, a local mother—her son Mitch is autistic—was able to speak to those who were in attendance about the particular challenges that she has faced as a parent of a child with autism. For those of us who are parents, I think we all look at the great job done by parents who find themselves in very difficult and trying circumstances. We look at the great job that they do with utter respect and a great deal of admiration, and I wish to express that here today.

This particular measure obviously ensures that there is a relevant tax exemption for those payments made under that payment. In relation to the Continence Aids Payments Scheme, I note that this particular proposal has arisen as a result of some of the changes that have occurred to the administration of the scheme—the CAAS scheme, the continence aids assistance scheme, is what it was previously known as. The changes that have been brought about ensure that now there is more choice in the hands of the recipient of a payment to go out and to source the particular product. The way in which the scheme has been structured means there are payments being made to recipients, to individuals, and this provision is largely to ensure that there are no adverse income tax consequences that flow from those payments. Frankly, it would put people at a disadvantage if they were now paying income tax or those payments were treated as being assessable in their hands when under the previous system there were no such taxation implications.

I take this opportunity to acknowledge the very good work in my community of the Nepean Social Club, which is a club that was established under the leadership of Kevin Finlayson, a great local identity. Kevin is in a wheelchair but he is someone who has been driving many a process in the advancement of the interests of people with disabilities in my local community over many years. He was awarded the coveted Wall of Achievement Award by the Penrith City Council some years ago. Kevin was the driving force behind establishing the Nepean Social Club. This issue under schedule 5, along with a range of other issues affecting people with disabilities, is one that he has brought to my personal attention, so I wish to acknowledge his advocacy. I know that he is a great leader within my local community and will continue to speak out and advocate on behalf of the members of his club but also, more generally, people with disabilities.

The next schedule, schedule 5, deals with exempting Commonwealth government securities from interest withholding tax. This is an eminently sensible proposal and I note that it has bipartisan support. This is a change that has largely been

necessitated by the succession of changes that have occurred in relation to the removal of interest withholding tax on corporate bonds which occurred back in 1999 and, more recently, on state government securities in 2008. This measure is principally about neutrality, ensuring that bonds of a similar type are treated similarly for taxation purposes. The main effect of the interest withholding tax provisions goes to the competitiveness of bonds that are issued by the Commonwealth government. Foreign investors with an appetite for investing in triple-A rated sovereign bonds currently have a choice between purchasing those triple-A rated interest withholding tax exempt bonds from other countries or indeed, within Australia, other jurisdictions, and acquiring those securities from the Commonwealth where, under the current law, there is no such exemption from the imposition of interest withholding tax.

This is a levelling of the playing field in that respect. It is a very sensible move, one that has some financial implications. It is estimated that the net cost of this measure will be \$52.4 million across the forward estimates. However, it is important to note that a large part of that will be offset by the increased demand that the removal of interest withholding tax from Commonwealth government securities will generate in that particular investment space. It is a proposal that I wholeheartedly support.

Schedule 6 is concerned with the response by the Australian community and the Australian government to the Victorian bushfires earlier this year. The member for Gippsland spoke very genuinely, very passionately and very sincerely about the impact that those fires had on his community and also the impact of the response that came from the rest of Australia to help his local community try and rebuild.

These amendments are largely directed towards ensuring that the widely held view within the community, and I think a view that has a very reasonable basis, is upheld. That view is that not only should the contributions that people made to the Red Cross in the first instance, at a time of national emergency and for which as individuals they received a tax deduction—and it is widely accepted in this country that donations of this sort should be tax deductible—be tax deductible but the way in which the mechanical transfer of those funds has occurred from the Red Cross to the appeal fund of which the Victorian government is the trustee should not in any way jeopardise the ongoing availability of the charitable status of the Red Cross.

The government and the parliament have acted to ensure that the appeal fund is a deductible gift recipient. These amendments largely go to the more broad issue of the expenditure of those funds. Whilst there might be a need to extend beyond the limits of the existing provisions of the tax law to ensure that some of the items of expenditure that this bill proposes would be allowed to occur without jeopardising the charitable status of the entities involved, I think it is entirely reasonable to conclude that those expenditures are completely in line with what not only the donors, being the rest of the Australian community, expect but also what the Australian government considers to be fair and reasonable. In acting on this particular proposal, the parliament will support that initiative and enshrine that in law.

I am inspired by the fund-raising efforts that have contributed to the relief fund. In the order of \$386 million has been raised, 18,324 payments have been made to individuals affected by bushfires, three-quarters of the fund will be paid out to individuals and families, and approximately \$95 million will be distributed to community projects in bushfire affected areas. On the one hand this has been a huge fund-raising exercise where the generosity of Australians all around this country has been on display, but it is now about ensuring that their generosity is able to be tapped into for the longer term reconstruction and benefit of the communities that are affected.

In closing I take this opportunity to acknowledge the Caring Hearts Community Quilters in my electorate who, through their own labour, provided a number of quilts to individuals that were affected by the bushfires. They did a great job. They are a wonderful bunch of ladies. I visited them recently and I know they will continue to do good work in our community.