



VLRC Consultation Paper
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Review of the Property Law Act 1958

SUBMISSION

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Abolition of legal life estates and the *Land Tax Act 2005*

1. The Commission's proposal at [3.19] is that "successive interests in land should be able to be created only in equity, as beneficial interests under a trust." Earlier, the Commission remarked

[3.16] . . . It would be most unusual for an experienced practitioner to recommend the creation of a legal settlement. The abolition of legal future interests would remove a method used only by the ill-advised.

2. Under the heading "Land held on trusts", Div 2A of Part 3 of the Land Tax Act imposes a general land tax surcharge on trusts. This is a tax integrity measure. Land tax is levied at progressive rates. A person's aggregated land-holdings forms the tax base. Before 2005, multiple trusts controlled by one person or by related persons had been used to avoid progressive rates of tax. Each of a number of trusts was separately assessed on a single or small-holding basis without aggregation. The mischief in the avoidance of aggregation is not attended to directly by the trusts surcharge. Instead, the measure works as a general discouragement to the use of trusts for land-holding purposes. Land tax for landholders that are trusts is computed at the higher rates set out in Part 3 of

Schedule 1 of the Act. This is subject to the s 46B procedure for mitigation of the trusts land tax surcharge if the trust in question is a fixed trust and beneficial interests are notified to the Commissioner.

3. The consequence, if the Commission's proposal is implemented, is that all successive interests in land would be liable to a discriminatory rates of Land Tax at differing rates.
4. Life interests have a considerable and growing use in connection with estate planning directed to another (lawful) species of avoidance. A testator's life interests fall outside the Family Provision regime under Part 4 of the *Administration and Probate Act 1958*. So also do remainder interests created in persons whom a testator wishes to benefit. Life interests have more than archaic uses.
5. I believe that abolition of legal successive interests in property, in this jurisdiction, is mismatched with the Land Tax regime applicable to land-holding trusts.

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