

Revenue Legislation Amendment Bill 2024

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, David Janetzki MP, Treasurer, Minister for Energy and Minister for Home Ownership make this statement of compatibility with respect to the Revenue Legislation Amendment Bill 2024 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill will amend the following legislation administered by the Commissioner of State Revenue (Commissioner) to implement revenue-related commitments made by the Government during the 2024 State Election campaign:

- the *Duties Act 2001* (Duties Act), to:
 - for dutiable transactions that involve first home owners purchasing a new home or vacant land on which to build a home, provide full duty relief in respect of the first home owners' interests and to the extent they will use the new home as their home (transfer duty first home new home relief); and
 - enable recipients of the transfer duty home concessions to rent part of their property during the one year occupation period and retain the full benefit of this relief; and
- the *Payroll Tax Act 1971* (Payroll Tax Act) to introduce an exemption to provide that wages liable to payroll tax and the mental health levy do not include wages paid or payable by medical practices to general practitioners.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the following human rights under the *Human Rights Act 2019* (Human Rights Act) are relevant to the Bill in respect of the transfer duty first home new home relief:

- the right to freedom of movement (section 19);
- property rights (section 24); and
- the right to privacy (section 25).

For the reasons outlined below, I am of the view that the Bill is compatible with these human rights.

The other amendments contained in the Bill have no adverse impact on the human rights protected by the Human Rights Act.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Duties Act – transfer duty first home new home relief

Under the Duties Act, transfer duty is imposed on dutiable transactions involving land in Queensland. Duty is generally imposed at the standard progressive rates in schedule 3 of the Duties Act. However, the Duties Act provides home concessions which result in concessional rates of transfer duty applying for certain dutiable transactions that involve a person purchasing residential land containing a residence that will be their home or first home or purchasing vacant land on which their first home will be constructed.

The Bill amends the Duties Act so that, for certain dutiable transactions involving first home owners purchasing residential land that contains a new home or vacant land on which they will construct a home, full transfer duty relief will be available in respect of the first home owners' interests and to the extent they will use the new home as their home.

To be eligible for the transfer duty first home new home relief, a person must, amongst other things:

- occupy the new home as their home for one year within one year of settlement, or within 2 years for vacant land (occupancy requirement). This aligns with the occupancy requirement that applies for the existing home concessions; and
- not dispose of the new home (e.g. by renting it out) prior to occupying or within one year after their occupation date (non-disposal requirement). However, they will be able to rent out a room once they start occupying it as a consequence of other amendments in the Bill to allow home buyers to rent part of their property. This aligns with the non-disposal requirements that apply for the existing home concessions.

Eligible first home buyers will be able to claim the transfer duty first home new home relief upfront at the time of the transaction on the basis that they will subsequently meet the occupancy and non-disposal requirements. Where a person fails to meet the relevant requirements, they will be required to notify the Commissioner. Upon receiving such notification or upon the non-compliance being separately identified by the Commissioner, a reassessment will be made to remove the benefit of the relief, either in full or in part depending on the circumstances.

In circumstances where a first home buyer purchases vacant land on which their home will be constructed, the relief is calculated by reference to the value of the 'residential vacant land'. This is defined as the land, or the part of land, on which a residence is to be constructed, including the curtilage that will be attributable to the residence once constructed, if the curtilage is to be used for residential purposes. Although it may not be possible to accurately identify the residential vacant land and its value before the residence is constructed, first home buyers will still be able to claim the relief upfront, with transfer duty assessed on the basis of what they expect the residential vacant land to be, and its value. That is, transfer duty may be assessed on the basis that they expect all or a part of the vacant land will be residential vacant land.

If, when the residence is constructed, the residence and its curtilage is only attributable to part of the land, or the part of the land it is attributable to is different, then they will be required to notify the Commissioner. Notification is only required if the transfer duty that was assessed is less than the transfer duty that would be assessed if the part of the land actually attributable to the residence and its curtilage were to be used to calculate transfer duty.

Upon receiving such notification or upon the Commissioner separately identifying these circumstances, a reassessment will be made which will result in some or additional transfer duty being payable (residential vacant land reassessment).

(a) the nature of the right

The right to freedom of movement provides that every person lawfully within Queensland has the right to move freely within Queensland, to enter or leave Queensland, and to choose where to live. The right to move freely within Queensland means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place.

The transfer duty first home new home relief potentially limits this right by making eligibility conditional upon a first home buyer satisfying the occupancy requirement. This is because it may be seen as restricting the person's ability to determine where they live for the relevant period.

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

Arbitrary deprivation of property in the human rights context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. The term 'deprived' is not defined by the Human Rights Act, however deprivation in this sense is considered to include the substantial restriction on a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

The transfer duty first home new home relief potentially limits this right by:

- making eligibility conditional upon the first home buyer satisfying the non-disposal requirements which restricts the person's ability to dispose of the property before they commence occupation or within one year after their occupation date. As renting out the property is considered a disposal, this also restricts their ability to derive profits from it; and
- requiring the Commissioner to make a reassessment to fully or partially remove the benefit of the relief where the first home buyer fails to comply with the occupancy or non-disposal requirements. Such reassessment would effectively require them to pay either additional or full transfer duty and would also trigger the imposition of unpaid tax interest and penalty tax under the *Taxation Administration Act 2001* (Taxation Administration Act); and
- requiring the Commissioner to make a residential vacant land reassessment. Such reassessment would effectively require them to pay either some or additional transfer duty

and would also trigger the imposition of unpaid tax interest and penalty tax under the Taxation Administration Act; and

- imposing the notification requirements in relation to the occupancy and non-disposal requirements and in relation to residential vacant land, with failure to notify constituting an offence under an existing provision of the Taxation Administration Act with a maximum penalty of 100 penalty units.

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, and correspondence (written and verbal). It protects privacy in the sense of personal information, data collection and correspondence but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, and correspondence. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The transfer duty first home new home relief potentially limits this right by imposing notification requirements requiring first home buyers to disclose information about their personal affairs to the Commissioner, such as the fact that they have not been occupying the new home, dealings associated with the new home (e.g. renting it out) and details about the residence constructed on their land.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of imposing conditions on eligibility for the transfer duty first home new home relief (including the occupancy and non-disclosure requirements) is to ensure that this generous relief only applies in the particular circumstances for which it was intended to apply. That is, it applies to first home buyers who are purchasing a new home which they will live in or vacant land on which they will build a home to live in.

The relief is designed to be claimed upfront at the time of the relevant dutiable transaction before the occupancy and non-disclosure requirements can be fully satisfied. That is, the relief will be able to be applied on the basis of declarations, made by the first home buyer in an application for the relief, as to their intention to satisfy the relevant requirements

In the case of a claim relating to vacant land on which a home will be constructed, it may be claimed before the residential vacant land can be accurately identified and therefore before its actual dutiable value is known. That is, the relief will be able to be calculated and applied on the basis of declarations made by the first home buyer in an application for the relief as to what they expect the residential vacant land to be once the residence is constructed. If it becomes apparent that the expected residential vacant land and its value was over-estimated and the value of the relief was incorrectly calculated resulting in them obtaining more relief than they are entitled to, a residential vacant land reassessment must be made.

In light of this, the purpose of the various reassessment requirements is to ensure that a first home buyer's transfer duty liability can be reassessed, to either fully or partially remove the benefit of the relief where certain eligibility requirements are not fully satisfied or where the value of the relief has been incorrectly calculated. Without a mechanism to reassess, a first

home buyer could access the benefit of the relief in circumstances where they are not entitled to it or obtain more relief than they are actually entitled to.

The Commissioner conducts compliance activities, such as to identify home buyers who fail to satisfy the occupancy or non-disposal requirements and to ensure that the correct amount of transfer duty is being calculated and paid. However, the purpose of the notification requirements is to alert the Commissioner to relevant circumstances in which the benefit of the transfer duty first home new home relief has been provided on transactions that should not qualify for relief or where more relief than intended has been claimed.

These purposes are consistent with a free and democratic society based on human dignity, equality and freedom because, collectively, they ensure that:

- the transfer duty first home new home relief is available only in the circumstances and to the extent intended;
- a first home buyer can claim the benefit of the transfer duty first home new home relief upfront, as opposed to paying full transfer duty and then subsequently requesting a reassessment for a refund upon satisfying the relevant occupancy and non-disposal requirements or upon accurately identifying the residential vacant land;
- community expectations are met that, where the transfer duty first home new home relief is claimed by a person who ultimately fails to meet the occupancy and non-disposal requirements or who claimed more relief than they are entitled to, there is an appropriate framework in place to facilitate the Commissioner wholly or partially removing the benefit of the relief.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The occupancy requirement, which may be seen to limit the right to freedom of movement, and the non-disposal requirements which limit property rights, collectively contribute to ensuring that only first home owners who will actually use the new home as their home benefit from this generous relief, as intended.

The occupancy requirement and non-disposal requirements align with requirements that apply to the existing home concessions. They are longstanding requirements and, along with the other eligibility criteria for those home concessions, contribute to ensuring that relief under those home concessions is delivered as intended.

The notification obligations and reassessment requirements collectively ensure that the benefit of the transfer duty first home new home relief is partially or fully removed in circumstances where certain eligibility requirements are not fully satisfied or where the value of the relief has been incorrectly calculated. The notification obligations provide a mechanism for alerting the Commissioner to circumstances in which a person may have received the benefit of the relief where it was not intended or to a greater extent than intended, while the reassessment provisions empower the Commissioner to make a reassessment to reflect the correct amount of transfer duty payable.

Reassessment powers and notification obligations typically apply to relief provided under the Duties Act, including the existing home concessions. This is particularly the case in

circumstances where that relief is permitted to be claimed upfront in anticipation of certain conditions being satisfied. They are a longstanding and effective mechanisms for ensuring relief is provided as intended. The reassessment powers and notification obligations in relation to the transfer duty first home new home relief are generally consistent with equivalent powers and obligations that apply in relation to other relief under the Duties Act.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the transfer duty first home new home relief.

Alternative ways of achieving the purpose may have different impacts on human rights but not necessarily less of an impact overall. For example, a model where relief is claimed after the occupancy and non-disposal requirements are satisfied, rather than upfront at the time of the dutiable transaction, would have:

- an equivalent impact on the right to freedom of movement;
- less of an impact on property rights in that:
 - penalty tax and unpaid tax interest would not be imposed if the first home buyer did not satisfy the occupancy and non-disposal requirements or claimed more relief than they are entitled to (because no reassessment to fully or partially remove the benefit of the relief would be required); and
 - no offence would be committed for failing to notify the Commissioner of the relevant matters;
- more of an impact on property rights in that first home owners would be required to pay full transfer duty upfront and then seek a refund once they had satisfied the relevant conditions or identified the residential vacant land with certainty;
- less of an impact on privacy rights of a first home owner who ultimately does not satisfy the occupancy or non-disposal requirements, or who claims relief in relation to vacant land on the basis of what they expect the residential vacant land to be, as they would not be required to notify the Commissioner of the relevant matters; and
- potentially more of an impact on privacy rights for first home owners who ultimately satisfy the occupancy and non-disposal requirements as they would then need to notify the Commissioner of that satisfaction which would potentially require them to disclose information about their personal affairs.

Given this alternative model would effectively delay the benefit of the transfer duty first home new home relief being received by eligible first home buyers and would be inconsistent with how the existing home concessions can be claimed, it is not considered a reasonable alternative.

Limitations on human rights arising from the transfer duty first home relief are ameliorated by the fact that:

- in relation to the freedom of movement, the occupancy requirement does not legally prevent a first home buyer from residing elsewhere during the relevant period. A first home buyer can choose not to satisfy the occupancy requirement but in doing so will need to accept the consequences of such a decision, being partial or full reassessment of transfer duty which

also triggers the requirement to pay penalty tax and unpaid tax interest and an obligation to notify the Commissioner;

- in relation to property rights being limited by the non-disposal requirements, those requirements do not legally prevent a first home buyer from disposing of their property or deriving income from it. A first home buyer can choose not to satisfy non-disposal requirements but in doing so will need to accept the consequences of such a decision, being partial or full reassessment of transfer duty which also triggers the requirement to pay penalty tax and unpaid tax interest and an obligation to notify the Commissioner;
- in relation to property rights being limited by the imposition of penalty tax and unpaid tax interest as a consequence of a reassessment, the Commissioner has a discretion to remit wholly or partly any penalty tax and unpaid tax interest on a case-by-case basis, having regard to relevant facts and circumstances; and
- it is open to a first home buyer to pay transfer duty on the dutiable transaction upfront and then, after they have satisfied the occupancy and non-disposal requirements, or once the residential vacant land can be identified with certainty, apply for the transfer duty first home new home relief. That is, it is a choice for eligible first home buyers as to whether they accept the potential impact on their property rights and right to privacy associated with claiming the transfer duty first home new home relief upfront.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In my opinion, the potential impact of the transfer duty first home new home relief on an individual's right to freedom of movement, property rights and the right to privacy is outweighed by the benefits to the State and citizens in ensuring that the relief is only available in the circumstances intended and to the extent intended.

In reaching this view, it is significant that:

- it is a decision for an eligible first home buyer as to whether they apply for the transfer duty first home new home relief;
- a first home buyer applying for the relief will be made aware of the obligations to meet the occupancy and non-disposal requirements, and the notification obligations and potential for reassessments to be made; and
- the occupancy requirement and non-disposal requirements, and the notification obligations and reassessment provisions associated with them, are longstanding and currently apply to persons claiming the existing home concessions.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Bill is compatible with human rights under the Human Rights Act because it limits human rights only to the extent that is reasonably and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

HON DAVID JANETZKI MP
TREASURER
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