

Royalty Legislation Amendment Bill 2020

Statement of Compatibility

FOR

Amendments during consideration in detail to be moved by the Honourable Cameron Dick MP

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Cameron Dick, Treasurer, Minister for Infrastructure and Planning make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Royalty Legislation Amendment Bill 2020 (the Bill).

In my opinion, the amendments to be moved to the Bill are 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 Amendments

The following amendments will be moved during consideration in detail:

- Amendments to the *Duties Act 2001* (Duties Act) will give retrospective legislative effect to three beneficial administrative arrangements that extend the family primary production business transfer duty concession to dutiable transactions between a person and their first cousin, or first cousin's spouse. Additionally, the amendments ensure the extension of this concession is continued on a permanent basis.
- Amendments to the *First Home Owner Grant Act 2000* (FHOG Act) will enable the Commissioner of State Revenue (Commissioner) and authorised officers to exercise investigative and enforcement powers under the FHOG Act for the administration of the Queensland Government's Regional Home Building Boost Grant (RHBBG) and the Australian Government's HomeBuilder Grant (HomeBuilder Grant). The amendments will also extend objection and review rights under the FHOG Act to RHBBG and HomeBuilder Grant applicants.
- Amendments to clarify the operation of provisions of the *Petroleum and Gas (Royalty) Regulation 2004* that are included in the Royalty Legislation Amendment Bill 2020.

Human Rights Issues

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

In my opinion, the human rights under the *Human Rights Act 2019* (Human Rights Act) that are relevant to the amendments to be moved to the Bill are:

- Freedom of expression (section 21 of the Human Rights Act) in respect of amendments to the FHOG Act which, for administration of the RHBBG and HomeBuilder Grant, make it an offence for a person to give the Commissioner a false or misleading document or statement.
- Property rights (section 24 of the Human Rights Act) in respect of amendments to the FHOG Act which ensure the Commissioner has necessary enforcement and investigative powers to support administration of the RHBBG and HomeBuilder Grant.
- Privacy and reputation (section 25 of the Human Rights Act) in respect of amendments to the FHOG Act which ensure the Commissioner has necessary investigative powers to support administration of the RHBBG and HomeBuilder Grant and permit the disclosure of confidential information in certain limited circumstances.

For the reasons outlined below, I am of the view the amendments to be moved to the Bill are compatible with each of these human rights.

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*)

Freedom of expression

(a) the nature of the right

Section 21 of the Human Rights Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

Amendments to the FHOG Act ensure that, for the purpose of administration of the RHBBG and HomeBuilder Grant, it is an offence for a person to give a document, or state anything, to the Commissioner or an authorised officer that the person knows is false or misleading in a material particular. These offences could potentially be seen to restrict the communication of information and therefore limit a person's freedom of expression.

(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 the limitation is to ensure that it is an offence for applicants of the RHBBG and HomeBuilder Grant to give the Commissioner false or misleading information in connection with their application for the grant. Where the offence is established, penalties apply. In addition to helping to ensure that the RHBBG and HomeBuilder Grant are only paid to eligible applicants as intended, it upholds the integrity of these programs, ensuring the proper and equitable administration to the benefit of eligible applicants. It is also in the interests of the public more generally given these grants are government funded.

- (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 offence provisions will facilitate integrity in the proper administration of the RHBBG and HomeBuilder Grant programs by disincentivising persons from providing false or misleading documents or statements, and subsequently receiving a grant where they are not entitled. They achieve this by ensuring there are appropriate sanctions available for conduct of this serious nature which would compromise the integrity of these grants. Where applicants have obtained a grant on the basis of false or misleading information, merely requiring repayment of the grant is not considered to be sufficient compliance response to this sort of conduct.

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

It is not considered there are any less restrictive and reasonably available ways to achieve the overall purpose of the amendments to the FHOG Act, which is to support the proposed administration of the RHBBG and HomeBuilder Grant. Without these offence provisions, there would be the potential for deliberate abuse of these beneficial grant programs by applicants who knowingly provide false or misleading information to dishonestly obtain the grant.

However, appropriate safeguards are provided to mitigate the impacts of any potential limitation. Specifically, the offences only apply where a person knowingly provides a document or states anything that is false or misleading in a material particular and it is relevant to note that prosecution would only be reserved for the most serious cases of deliberate non-compliance. Additionally, the limitation is consistent with existing offences in the FHOG Act which are longstanding.

- (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

On balance, it is considered that any potential limitation on the freedom of expression is outweighed by the importance of upholding integrity in the administration of the RHBBG and HomeBuilder Grant, for the benefit of eligible applicants and in the interests of the public more generally. Importantly, there are appropriate safeguards in place and freedom of expression is only limited to the extent it is an intentional expression of information which is false or misleading.

- (f) any other relevant factors

Nil.

Property rights

(a) the nature of the right

Section 24 of the Human Rights Act protects the right of a person to own property, whether alone or with others, and provides that a person has a right to not be arbitrarily deprived of their property. It extends to real or personal property and to traditional aspects of property rights, such as the ability to use, transfer or dispose of property.

Amendments to the FHOG Act ensure that, for administering the RHBBG and HomeBuilder Grant, the Commissioner has enforcement and investigative powers similar to those available for First Home Owner Grant (FHOG) administration. These amendments include investigative powers such as to enter and search premises and to request documents in connection with administration of the grants. They also include powers to facilitate recovery of the grant, including the power to require an applicant to repay a grant, the power to impose a penalty for failing to repay a grant as required, the ability to impose a charge on the applicant's interest in the land on which the home is built and the power to collect amounts from a garnishee. These provisions could potentially limit a person's property rights.

(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 RHBBG and HomeBuilder Grant may be paid before certain eligibility conditions, such as occupancy requirements, are satisfied. Accordingly, it may be necessary for the Commissioner to carry out compliance activity, including investigations, to determine whether an applicant has met the conditions of a grant. To ensure the necessary investigation powers are available to facilitate this compliance activity, authorised officers will have the power to enter premises, to search for things and to request documents. In the case of residential premises, this may only occur with the occupier's consent or with a warrant. In the case of a place of business, this may only occur without a warrant if the place is open for business or for entry. These powers are necessary for the conduct of effective compliance activities as it is anticipated that the nature of the grants may provide an impetus for certain persons to abuse the scheme to profit from the grants.

Applicants will be legislatively required to repay the grant where conditions of the grant are not complied with, a grant was paid in error or an applicant is later found not to have satisfied the eligibility criteria. Where an applicant has failed to repay an amount as required, an applicant does not satisfy the conditions of the grant or an amount has been paid in error to an applicant who has provided false or misleading information, then the Commissioner may impose a penalty.

Further, where any applicant has failed to repay a grant, the Commissioner may impose a charge on the applicant's interest in the land on which the home is built, which may be registered with the Registrar of Titles. The ability to impose a charge on an applicant's land protects the State's financial interests by assisting the Commissioner to recover amounts owing.

Additionally, the Commissioner may recover a grant that is repayable by an applicant, and associated penalty amounts, through garnishees. As there may be circumstances where repayment obligations are not complied with, statutory charge and garnishee provisions ensure the Commissioner can take appropriate measures to facilitate recovery of the grants from applicants who are ultimately not entitled.

- (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 limitations provide the Commissioner with requisite powers to undertake compliance activity as necessary and to take appropriate recovery action to ensure that the RHBBG and HomeBuilder Grant benefit only eligible applicants as intended. This upholds the integrity of administration which ensures equity for applicants and, given these beneficial grant programs are government funded, is in the interest of the public generally.

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

The Office of State Revenue promotes voluntary compliance by ensuring comprehensive information and assistance is available to enable applicants to meet their obligations. However, it is critical that there is a robust compliance framework in place to ensure that the grants benefit only eligible applicants as intended.

The Commissioner's administration of the RHBBG and HomeBuilder Grant is underpinned by administrative directions, and the National Partnership Agreement on HomeBuilder in the case of the HomeBuilder Grant. These set out the eligibility criteria, application process and ongoing conditions and obligations for applicants. However, investigative and enforcement powers, including provisions to facilitate the recovery of the grants, cannot be effectively provided for in an administrative direction as such powers need to be provided for in primary legislation to ensure they have full legal effect. Such powers are intended to deter non-compliance and they also operate as recourse in cases of deliberate non-compliance.

The investigation provisions contain safeguards to mitigate the impacts of the limitation. Investigative powers can only be exercised by the Commissioner or an authorised officer who has the necessary expertise or experience, and authorised officers are issued with an identity card which they are required to produce or display if exercising a power against a person.

Powers of entry can generally only be exercised by consent or with a warrant. These limitations on the power to enter protect individuals from indiscriminate interference with their rights and liberties. Additionally, it is relevant to note that these investigation powers are permitted in connection with the administration of the FHOG Act only. Persons also have the right to claim compensation from the Commissioner if property is damaged because of the exercise or purported exercise of an investigative power.

Safeguards are also in place in relation to the provisions which facilitate the recovery of grants. Applicants have the right to lodge an objection with the Commissioner, if the Commissioner

requires the applicant to repay the grant and imposes any penalty amount. An applicant has the further right to seek external review of an objection decision to the Queensland Civil and Administrative Tribunal.

The statutory charge and garnishee provisions contain safeguards to protect the rights of third parties. There are certain procedures which must be followed for registering and releasing charges. Additionally, the charge only applies to the land when a debt is outstanding and it must be released once the debt has been paid. In relation to garnishees, only amounts relating to an applicant's debt can be recovered from a garnishee. Further, payment under the garnishee notice is not required until the garnishee actually holds the money for, or is liable to pay the amount to, the applicant. The amount required to be paid by the garnishee may be the full amount of the debt, a lesser amount or amounts at intervals. This allows the Commissioner, when issuing the garnishee notice and requiring payment by the garnishee, to take account of reasonable living costs, for which the applicant may require some of the monies held by the garnishee.

For the reasons outlined above, it is considered there are no less restrictive or reasonably available ways of achieving the purpose identified above. It is also relevant to note that the limitations being imposed on RHBBG and HomeBuilder Grant applicants align with existing limitations that are imposed on FHOG applicants under longstanding provisions of the FHOG Act.

- (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

On balance, it is considered that any potential limitation on property rights is outweighed by the importance of ensuring the Commissioner has the necessary powers to uphold the integrity of the RHBBG and HomeBuilder Grant programs for the benefit of applicants and the public more generally. Importantly, the relevant provisions contain suitable safeguards to regulate their use or ensure they operate in limited circumstances only. Additionally, while the limitations have the potential to apply to all applicants, they will practically only apply in cases of non-compliance.

- (f) any other relevant factors

Nil.

Privacy and reputation

- (a) the nature of the right

Section 25 of the Human Rights Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Further, a person has the right not to have their reputation unlawfully attacked. In this context, privacy extends to matters such as personal information and data collection, while an unlawful or

arbitrary interference would be one not permitted by law or that would otherwise be capricious, unpredictable or unjust.

As noted, amendments to the FHOG Act ensure the Commissioner and authorised officers have investigative powers, such as to enter and search premises, and to request documents, in connection with administration of the RHBBG and HomeBuilder Grant. This could potentially limit a person's right to privacy or reputation.

Additionally, while it will generally be an offence to disclose personal and confidential information collected from RHBBG and HomeBuilder Grant applicants, there are certain circumstances in which disclosure will be expressly permitted which could potentially limit a person's right to privacy or reputation.

(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

As noted, authorised officers will have the power to enter premises, to search for things on these premises and to request documents. Investigation and enforcement powers such as these enable the Commissioner to undertake compliance activities. This is critical for RHBBG and HomeBuilder Grant administration as the grants may be paid before certain eligibility conditions, such as occupancy requirements, are satisfied. While it is generally expected that applicants will seek to voluntarily comply with grant requirements, there may be circumstances where it is necessary to utilise investigative powers, such as powers to enter and search and powers to request documents, in order to undertake compliance to determine whether an applicant should retain the benefit of a grant.

In administering the grants, the Commissioner will be provided with a range of information which may relate to applicants' personal affairs. Given the nature of the information and the fact that the Commissioner may compel its provision, appropriate limitations on the disclosure of information by the Commissioner and other persons who have obtained access to the information are necessary. While it will generally be an offence to disclose confidential information, disclosure will be permitted in certain limited circumstances. For example, if the disclosure is expressly permitted or required under an Act, if it is in connection with the administration or enforcement of Queensland's taxation laws (such as the Duties Act) or the FHOG Act or for a legal proceeding relating to the grants. Further, in relation to the HomeBuilder Grant, disclosure of confidential information to the Australian Government will also be expressly permitted.

(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

In the absence of powers to enter and search and to request documents, the Commissioner will not be able to effectively investigate whether an applicant has satisfied the eligibility criteria for the RHBBG and HomeBuilder Grant. Similarly, the Commissioner will not be able to monitor compliance with ongoing conditions, and subsequently recover the grants if necessary.

As personal confidential information obtained in administering the RHBBG and HomeBuilder Grant may be relevant to the administration of other laws, permitting disclosure of this confidential information in limited circumstances is necessary. For example, as some of the requirements of the RHBBG and Home Builder Grant, such as occupancy requirements, are similar to requirements for transfer duty home concession under the Duties Act, it is appropriate for the efficient administration and integrity of the Duties Act that disclosure is permitted in connection with administration and enforcement of the Duties Act. Further, disclosure in connection with the administration or enforcement of the FHOG Act enables proper administration and enforcement of grants generally, as a person may have applied for a combination of the FHOG, RHBBG and HomeBuilder Grant. Additionally, permitting disclosure to the Australian Government of confidential information obtained in the administration of the HomeBuilder Grant is necessary to enable the Australian Government to reimburse the State for grants paid, on a monthly basis in arrears.

With the exception of permitted disclosures of confidential information to the Australian Government in connection with the HomeBuilder Grant, the permitted disclosures align with existing permitted disclosures of confidential information under the FHOG Act. It is considered appropriate that similar confidentiality provisions apply for RHBBG and HomeBuilder Grant for consistency in administration of home owner grants in Queensland.

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

It is not considered there are any less restrictive and reasonable ways to achieve the purpose of the provisions. However, appropriate safeguards are provided to mitigate the impacts of the limitation. Entry powers can only be exercised in limited circumstances, for example, where the occupier consents, it is a public place or place of business and entry is made when the place is open to the public or open for entry, or with a warrant. As the RHBBG and HomeBuilder Grant are government funded and only intended to benefit applicants who satisfy certain criteria and conditions, this limitation is considered reasonable and necessary to ensure integrity in the administration of the RHBBG and HomeBuilder Grant and that grants are only paid to eligible applicants as intended.

Disclosure of confidential information is an offence, which provides a general safeguard to protect private information. Additionally, disclosure is permitted in only limited circumstances, including those identified above, which are considered appropriate and generally align with existing permitted disclosures under the FHOG Act. Additionally, the *Information Privacy Act 2009* provides further safeguards about the use of information obtained.

(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

On balance, it is considered that any potential limitation on the right to privacy and reputation as a consequence of the investigative powers is outweighed by the importance of ensuring the Commissioner has the necessary powers to uphold the integrity of the RHBBG and HomeBuilder Grant programs for the benefit of applicants and the public more generally.

Additionally, any potential limitation on the right to privacy and reputation as a consequence of allowing confidential information to be disclosed in certain circumstances is outweighed by the benefit of ensuring that the RHBBG and HomeBuilder Grant are administered consistently with the FHOG and ensuring efficient administration and integrity of other laws, such as taxation laws. Importantly, the relevant provisions contain suitable safeguards to regulate their use or ensure they operate in limited circumstances.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Royalty Legislation Amendment Bill 2020 are compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

THE HONOURABLE CAMERON DICK MP
TREASURER
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