

Revenue Legislation Amendment Bill 2023

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* (Human Rights Act), I, Cameron Dick, Treasurer and Minister for Trade and Investment make this statement of compatibility with respect to the Revenue Legislation Amendment Bill 2023 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the Human Rights Act. 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):

- the *Land Tax Act 2010* (Land Tax Act), the *Duties Act 2001* (Duties Act) and the *Land Tax Regulation 2021*, to provide land tax and additional foreign acquirer duty concessions in relation to eligible build to rent (BTR) developments that include affordable housing at a discounted rent, being:
 - a 50 per cent reduction in the taxable value of land for land tax for land used for an eligible BTR development, for up to 20 years;
 - a 100 per cent reduction in the taxable value of land for land tax foreign surcharge for land used for an eligible BTR development, for up to 20 years; and
 - a 100 per cent discount on any additional foreign acquirer duty for land for an eligible BTR development (the BTR measure);
- the Land Tax Act, to remove the requirement for a landowner to apply for a land tax exemption in relation to property used as a home, where the Commissioner has sufficient information to verify eligibility (the land tax home exemption measure);
- the *Payroll Tax Act 1971* (Payroll Tax Act), to:
 - extend the 50 per cent rebate for wages paid or payable to apprentices and trainees to include wages paid or payable during the financial year ending on 30 June 2024;
 - extend the 1 per cent payroll tax rate discount for regional employers for a further 7 years, until 30 June 2030; and
 - incorporate into the Payroll Tax Act transitional provisions currently contained in the *Payroll Tax (Transitional) Regulation 2022* that will expire on 1 January 2024, in relation to a change to the payroll tax deduction phase out rate during the 2022-23 financial year; and
- the *Taxation Administration Act 2001* (Administration Act), to clarify the operation of the refund provisions, to ensure that the code established by the Administration Act together with particular provisions contained in the revenue laws, continues to be the

only way entitlements to refunds of amounts paid under a tax law may arise, as intended (the refund measure).

Human Rights Issues

Human rights relevant 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 Bill are:

- property rights (section 24 of the Human Rights Act) in respect of the land tax home exemption measure, the refund measure and the BTR measure;
- the right to privacy (section 25 of the Human Rights Act) in respect of the land tax home exemption measure and the BTR measure; and
- the right to a fair trial (section 31 of the Human Rights Act) in respect of the refund measure.

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*)

Land tax home exemption measure

The Land Tax Act provides that, subject to conditions:

- land is exempt from land tax for a financial year if used as the home of an individual (if owned by the individual) or all beneficiaries of a trust (if owned by the trustee of the trust); and
- land is partially exempt from land tax for a financial year where it is used both as a home and for another purpose such as a home-based business (although certain non-home uses of the land, such as a work from home arrangement and certain letting arrangements, will not prevent a full exemption being available).

Currently, the Land Tax Act requires an application to be lodged by a land owner for the first financial year in which an exemption is sought for particular land, including the exemption outlined above (the home exemption). An application is not required in respect of subsequent financial years if the person's circumstances have not changed. Where land that was exempt land for a particular financial year ceases to be exempt when a liability for land tax arises for the next financial year (e.g. because the land owner is using the land for a different purpose), and there has been no change in ownership, the land owner is required to give notice to the Commissioner.

To simplify land tax administration for land owners, the Bill amends the Land Tax Act to remove the requirement for a land owner to apply for the home exemption in relation to particular land where, on the basis of information available to the Commissioner, the

Commissioner believes that the exemption applies to the whole or part of the land. Where the Commissioner cannot form this belief on available information, the land owner would need to continue to access the home exemption by lodging an application.

To support this, the Bill also amends the Land Tax Act to:

- impose a new obligation on a land owner to notify the Commissioner in certain circumstances if the land owner becomes aware that the Commissioner has incorrectly considered that the land owner was eligible for an exemption on a particular basis, or if there is any other error with the Commissioner's determination of the land owner's land tax liability (the incorrect determination notification requirement); and
- expand the existing obligation on a land owner to notify the Commissioner where previously exempt land ceases to be exempt, to also require notification where the percentage of the land that is exempt changes between financial years (the exemption change notification requirement)

(each, a notification requirement).

The land tax home exemption measure limits the human rights of property rights (section 24 of the Human Rights Act) and the right to privacy (section 25 of the Human Rights Act).

(a) the nature of the right

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.

The right includes the protection from the arbitrary deprivation of property. 'Arbitrary' 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 land tax home exemption measure limits this right by imposing the notification requirements, because a failure to comply with one of those requirements within the specified timeframe:

- will be an offence under an existing Administration Act provision, with a maximum penalty of 100 penalty units, unless the land owner has a reasonable excuse for non-compliance; and
- if an assessment of the land owner's land tax liability has not previously been made for the financial year, will allow the Commissioner to make an assessment or default assessment of such liability with unpaid tax interest (UTI) (and penalty tax, in the case of a default assessment) being imposed (subject to remission) in addition to land tax.

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 land tax home exemption measure limits this right by:

- contemplating that the Commissioner will consider the affairs of a land owner to determine whether particular land has been used as a person's home for a financial year; and
- imposing the notification requirements, which require the land owner to provide information to the Commissioner in relation to the land owner's affairs.

(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

Introduction

The process of the Commissioner determining a land owner's land tax liability (if any) for a particular financial year does not require the lodgement of a return by the land owner. Instead, the Commissioner relies on, amongst other things:

- data provided by the Department of Resources to determine the extent of a particular land owner's landholdings;
- application forms lodged by the land owner in the current or a previous financial year to determine whether particular land is exempt land; and
- notices required to be lodged by a land owner under the Land Tax Act in relation to changes in the land owner's circumstances.

Offences, UTI and penalty tax

There are a number of potential ways in which the Commissioner may incorrectly determine a land owner's land tax liability for a financial year, including on account of believing that a particular exemption which applied in a prior financial year continues to apply (because the land owner has not notified the Commissioner of changes in the land owner's circumstances as required).

The existing obligation in the Administration Act to notify the Commissioner of an underassessment of land tax liability (the existing notification obligation), whether or not on account of particular land being incorrectly treated as exempt land, applies only where that liability is reflected in an assessment notice issued by the Commissioner. In such a case, failure to comply with the existing notification obligation within the specified timeframe is an offence under the Administration Act with a maximum penalty of 100 penalty units (unless the land owner has a reasonable excuse for non-compliance), and UTI and penalty tax will be imposed (subject to remission) on a reassessment to correct the error.

Where an error results in the Commissioner determining that the land owner has no land tax liability for the financial year, the Commissioner may have decided not to issue an assessment notice reflecting a nil liability, and the existing notification obligation will therefore not be enlivened. The purpose of the incorrect determination notification requirement is to ensure that an equivalent notification obligation arises where no assessment notice has been issued, to ensure land owners are treated consistently irrespective of whether or not the Commissioner has issued an assessment notice. To incentivise compliance with the incorrect determination notification requirement, a failure to comply within the specified timeframe will have the penalty, UTI and penalty tax consequences outlined above for the notification requirements.

Allowing the Commissioner to determine land tax liability on the basis that particular land is subject to the home exemption in the absence of an application form having been lodged by the land owner means that there may be circumstances in which the Commissioner believes that the exemption applies (even though, in fact, it does not) and determines the land owner's land tax liability accordingly. Where this occurs, the land owner will be required to notify the Commissioner under either the existing notification obligation or the incorrect determination notification requirement (depending on whether an assessment was issued), with the consequences for a failure to comply within the specified timeframe being as outlined above.

As noted above, the Land Tax Act currently requires a land owner to notify the Commissioner where previously exempt land ceases to be exempt by the time a land tax liability arises for the financial year. However, a notification obligation does not currently exist where the percentage of the land that is exempt changes between financial years (for instance, because of a change in the extent of non-exempt usage of the land during the financial year). The exemption change notification requirement will address this, so that the Commissioner has knowledge of the changed circumstances in order to make an accurate determination of the land owner's land tax liability for the financial year. Failure to comply with this requirement within the specified timeframe will have the penalty, UTI and penalty tax consequences outlined above for the notification requirements.

These consequences are intended to disincentivise non-compliance with the exemption change notification requirement.

Further, both of the notification requirements require the land owner to provide the Commissioner with particular information about the land owner's affairs. This is necessary because the Commissioner may not otherwise be aware of the matters to which the notification relates.

Determination of eligibility for home exemption

As noted, currently a land owner who is factually entitled to the home exemption in respect of particular property (an exempt land owner) is required to lodge an application form with the Commissioner for the first financial year for which the home exemption is sought. Amongst other things, the application form for the home exemption requires the exempt land owner to indicate the basis on which the land is used as a home and provide details of any non-home use.

Allowing the Commissioner to determine a land owner's liability on the basis that the home exemption applies to particular land without the land owner being required to lodge an

application form is premised on the Commissioner obtaining and considering information from other sources to form a belief as to whether the home exemption applies. The initial stages of the process of identifying land in respect of which the Commissioner believes that the home exemption applies (e.g. excluding from further consideration any land that is clearly not residential land) have the potential to identify for further consideration not only land owned by an exempt land owner, but also land owned by a land owner who owns residential land but is not factually entitled to the home exemption in respect of the land (a non-exempt land owner).

For an exempt land owner, the consideration necessary for the Commissioner to form the view that the owner is entitled to the home exemption will necessarily involve the Commissioner considering the owner's affairs, including their place of residence.

For a non-exempt land owner, their ineligibility for the exemption will not be apparent to the Commissioner at those preliminary stages, and the Commissioner would need to consider additional available information before forming a belief that the non-exempt land owner did not use the land as their home.

Conclusion

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

- where the Commissioner has sufficient information to form a belief as to eligibility, the home exemption will be applied for a land owner's benefit without any action being required on the part of the land owner; and
- community expectations are met that, where a land owner's land tax liability has been incorrectly determined by the Commissioner (whether or not because of the Commissioner believing that the home exemption applies to particular land, when it does not), there is an appropriate framework in place to incentivise early disclosure by the land owner to facilitate the Commissioner determining the correct liability.

(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

Property rights

Where a land owner's land tax liability is incorrectly determined, the Commissioner may be unaware of such incorrect determination unless and until notified by the land owner – especially where the error is that the home exemption has been applied to ineligible land based on the Commissioner's belief. Ensuring that there are appropriate consequences for a failure to comply with the incorrect determination notification requirement within the specified timeframe is considered necessary to encourage timely compliance with the requirement. The imposition of UTI on an assessment or UTI and penalty tax on a default assessment (subject to remission) in the case of non-compliance necessarily impacts the property rights of a land owner.

Similarly, a failure by a land owner to comply with the exemption change notification requirement may result in the Commissioner determining the land owner's land tax liability incorrectly in a subsequent financial year if the Commissioner is otherwise unaware of the

relevant circumstances. The financial consequences of non-compliance with this requirement will similarly impact a land owner's property rights.

The imposition of UTI and penalty tax in these circumstances is consistent with the general operation of the Administration Act. The Commissioner may potentially wholly or partially remit UTI and/or penalty tax on an assessment or default assessment on a case-by-case basis, having regard to all relevant facts and circumstances.

Further, failure to comply with a notification requirement will necessarily affect the property rights of a land owner to the extent that a penalty is imposed for commission of an offence.

Right to privacy

In forming a belief as to whether the home exemption applies to particular residential land, the Commissioner will consider a range of information. As the goal of that process is to form a belief as to whether the residential land is used as the home of the land owner (or, where the land owner is a trustee, the home of the beneficiaries of the trust), it will not necessarily be clear to the Commissioner at the start of that process whether the land is owned by an exempt land owner or a non-exempt land owner. This means that the Commissioner will need to consider particular information to ultimately form the belief as to whether the land is used as the home of the land owner (or beneficiaries, if applicable).

An exempt land owner's right to privacy will be affected irrespective of the outcome of that process. That is, whether the Commissioner forms a belief through the process that the exempt land owner used the property as their home, or does not form that belief and ultimately receives an application form from the exempt land owner, the Commissioner will be aware of some of the exempt land owner's affairs including their place of residence.

For a non-exempt land owner, the same process will occur despite the non-exempt land owner's actual place of residence not being relevant to the determination of their land tax liability. The right to privacy of a non-exempt land owner will therefore necessarily be impacted by this process, but only to the extent of the Commissioner forming the belief that the land owner does not use particular property as their home (i.e. the Commissioner will not otherwise seek to positively determine where a non-exempt land owner does live, if not in the particular property).

The notification requirements necessarily impact the right to privacy of a land owner, by requiring the owner to disclose to the Commissioner the personal affairs of the owner in particular circumstances (e.g. that the land owner holds additional land than that of which the Commissioner was aware, or that the land owner was temporarily absent from their home and therefore was ineligible for the home exemption). As noted, the provision of this information by the land owner is critical to the land owner's land tax liability being correctly determined.

(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 land tax home exemption measure.

The nature of the land tax assessment framework (i.e. the land owner is not required to lodge a return each financial year, detailing the land owner's land holdings and the use of each parcel

of land) means that the Commissioner will determine a land owner's land tax liability for a financial year on the basis of information available to the Commissioner at a particular time. As a preliminary step, the Commissioner obtains information in relation to the ownership of all land in Queensland as at midnight on the preceding 30 June. The aggregate landholdings of the particular land owner are then identified, with the next steps depending on the nature and extent of the land held.

Currently, in determining whether the home exemption applies to particular land held by the land owner, some of the information relied upon by the Commissioner is initially sourced from any application form that has been lodged by the land owner in the current or a previous financial year. This means that the right to privacy of an exempt land owner is already affected by the current process requiring lodgement of an application form in order for the home exemption to be applied to particular property.

Under the current process, a non-exempt land owner may potentially be contacted by the Commissioner and invited to lodge an application form to claim the home exemption if eligible, but would not do so if acting in good faith. The non-lodgement of an application form in respect of a particular property following an invitation to do so impliedly indicates that the non-exempt land owner does not use the property as their home. While this process may potentially have less of an impact on the right to privacy of a non-exempt land owner than a process which contemplates the Commissioner considering the issue of eligibility without application forms, the end result of both processes for the non-exempt land owner would be the same (i.e. the Commissioner would believe that the non-exempt land owner did not reside in the particular property and determine land tax liability on that basis).

As noted, the notification requirements are necessary to ensure that the Commissioner is made aware of issues relevant to the determination of a land owner's land tax liability. In particular, the incorrect determination notification requirement would logically only arise if the Commissioner did not have full and correct information when the land owner's land tax liability was determined, and the land owner may be the only source of the correct information. An alternative method of obtaining such information from the land owner (e.g. through an application form) would have an equal impact on the land owner's right to privacy as the notification requirements.

In relation to property rights, the critical nature of the notification requirements necessitates there being meaningful consequences for non-compliance. That is to say, imposition of the notification requirements without making failure to comply without reasonable excuse an offence or allowing the imposition of UTI or penalty tax in certain cases would significantly reduce the likelihood of compliance.

(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 land tax home exemption measure on an individual's property rights and the right to privacy is outweighed by the benefits to the State and citizens in ensuring that the home exemption is only available in appropriate cases.

In reaching this view, it is significant that:

- the land tax home exemption measure is beneficial, in that it removes the need for an exempt land owner to lodge an application for the home exemption in certain circumstances;
- under both the current administrative process and the process contemplated by the land tax home exemption measure, the Commissioner will become aware that a particular property is not used as a home by a non-exempt land owner;
- a land owner to whom a notification requirement applies can avoid any impact on their property rights by complying with the requirement within the specified timeframe; and
- the consequences for non-compliance with a notification requirement are consistent with the consequences for non-compliance with similar existing obligations under the Land Tax Act.

(f) any other relevant factors

Nil.

Refund measure

The Administration Act contains general provisions about the administration and enforcement of revenue laws in Queensland, including the Duties Act, the Payroll Tax Act, the Land Tax Act, the *Betting Tax Act 2018* and provisions in the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to the extent that they relate to royalty.

While the Administration Act provides a general administrative framework for all revenue laws, administrative provisions may also be included in the revenue laws themselves as necessary to address matters specific to that revenue line. The Administration Act and each revenue law are to be read together as a single Act to provide a complete legislative framework for that particular revenue line.

Amongst its provisions, the Administration Act contains provisions relating to refunds of tax and other amounts. In particular, it provides that an entitlement to a refund of an amount paid or purportedly paid under a tax law (being a revenue law or the Administration Act) only arises under Part 4, Division 2 of the Administration Act. It sets out the circumstances where an entitlement to a refund may occur and the conditions and timeframes for making those refunds. Certain revenue laws also contain particular provisions which provide taxpayers with an entitlement to a refund under that law.

It is the longstanding position that the provisions in Part 4, Division 2 of the Administration Act, together with particular provisions contained in the revenue laws, provide a code for refunds. That is, refunds of amounts paid under a tax law were not intended to be available under common law remedies, but only available under those provisions.

The Bill amends the Administration Act to clarify the operation of the refund provisions, to ensure that the code established by the Administration Act together with particular provisions contained in the revenue laws, continues to be the only way entitlements to refunds of amounts paid under a tax law may arise.

The Bill provides that any common law right, remedy or cause of action for a refund is extinguished, except where a taxpayer has already exercised that common law right to pursue a refund by starting a legal proceeding. In this case, it is considered appropriate that the proceeding be allowed to be continued and determined in accordance with the law before commencement of the amendment.

The refund measure limits an individual's property rights (section 24 of the Human Rights Act).

(a) the nature of the right

As noted above, the right to property under section 24 of the Human Rights Act 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 right to bring an action (whether for a monetary amount or otherwise) is considered to be a property right.

As such, the refund measure limits this right by precluding and extinguishing (in some circumstances) common law rights to commence proceedings for a refund of an amount paid under a tax law. The refund measure further limits property rights by confining the circumstances in which a refund can be paid to the time-limited means provided for under the Administration Act.

(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

Whether an individual's right to bring common law actions to pursue a refund is extinguished will depend on whether a proceeding has been started before the amendment commences. Where an individual has not exercised their right to bring a proceeding before the amendments commence, any pre-existing common law right to bring an action seeking a refund will be extinguished. It is the longstanding position that common law rights to bring an action seeking a refund of an amount paid or purportedly paid under a tax law were not intended to be available. Extinguishing common law rights to bring an action seeking a refund only where a person has not started legal proceedings is aimed at restoring the intended operation of the refund provisions to the greatest extent possible, without impacting any current legal proceedings that may be on foot.

Where common law rights to seek a refund of amounts paid under a tax law are extinguished or precluded, this does not remove any right of individuals to challenge amounts assessed and paid under a tax law. The Administration Act has an established and comprehensive review framework to which an individual may have recourse if they are dissatisfied with their assessment of tax, or with a decision leading up to or forming part of it.

For example, if a taxpayer wishes to dispute a tax liability, they may do so through the objection, review and appeal framework established under Part 6 of the Taxation Administration Act, which may result in a reassessment decreasing their tax liability. The Commissioner also retains a general discretion to issue a reassessment for a period of five years. Where the Commissioner makes a reassessment decreasing a liability (within five years), a taxpayer is entitled to a refund.

While the avenues to challenge a tax liability or otherwise pursue a refund entitlement under the Administration Act are time-limited, the five year period within which a taxpayer may seek a refund is a longstanding and well known timeframe. The timeframe is also a standard time period afforded to taxpayers in state revenue administration. Further, an entitlement to a refund arises on the existence of certain criteria (and is not dependant on any discretion). Once an entitlement to a refund arises, a positive obligation is imposed on the Commissioner to refund an amount (or apply it to another liability in certain circumstances) in a timely way.

Extinguishing or precluding common law rights to commence proceedings to claim a refund and limiting an individual's ability to access a refund of an amount paid under a tax law to where there is a refund entitlement under the Administration Act is considered necessary to restore the intended operation of the refund provisions and ensure certainty of the public revenue. This is consistent with a free and democratic society based on human dignity, equality and freedom because the integrity of the public revenue is essential for its continued and effective management for the benefit of the State and all Queenslanders.

(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

Extinguishing or precluding common law rights to pursue a refund and clarifying that an entitlement to a refund of amounts paid under a tax law only arises under the Administration Act provides certainty to the State and individuals regarding how a tax liability may be challenged, the circumstances in which an entitlement to a refund arises, the avenues through which a refund may be sought and the timeframes within which these avenues must be pursued.

It achieves the purpose of ensuring the certainty of the public revenue after the reasonable opportunity afforded by the Administration Act to dispute the amount of tax imposed or otherwise pursue a refund entitlement has been afforded to the individual. In this sense, it is considered to strike an appropriate balance between protecting an individual's review rights and facilitating the continued and effective management of the public revenue.

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

Preserving common law rights to pursue a refund of tax may allow individuals to circumvent the review/refund pathways and associated timeframes (generally, five years) provided for under the Administration Act, which would create uncertainty which may compromise the continued and effective management of the public revenue. Removing the right to bring an action seeking a refund for these reasons is considered a justified and proportionate limitation of the right to property.

Further, limiting payment of refunds to refund entitlements under the Administration Act does not result in an arbitrary deprivation of a person's property. As noted, the refund provisions already contain legislated safeguards as to when and how refund entitlements may arise (and how long these endure) and impose positive obligations on the Commissioner of State Revenue to refund amounts in a timely manner. These clear rules limit the possibility that refund amounts may be withheld in a capricious, unpredictable or unjust manner or in a manner disproportionate to the aim that is sought.

In my view there is no other less restrictive and reasonably available way that will achieve the purpose of these amendments.

(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

To the extent that existing common law rights to bring a proceeding seeking a refund are extinguished, it is considered a justified and proportionate limitation of an individual's right to property in order to restore the intended operation of the refund provisions while not impacting on individuals who have taken steps to start a proceeding before the amendments commence.

To the extent that common law rights to bring a proceeding seeking a refund are precluded, it is considered that the Administration Act provides a fair and comprehensive review framework to challenge liabilities and seek refunds while ensuring the continued effective administration of public revenue.

Further, it is considered that the rules surrounding the time-limited means by which a refund of an amount paid under a tax law may be pursued under the Administration Act are clear, certain and longstanding. To the extent that requests for a refund of an amount paid under a tax law fall outside the refund entitlements provided for under the Administration Act, these are not considered to amount to an arbitrary deprivation of property.

It is my opinion that, on balance, any limitation on a person's property rights is outweighed by achievement of the policy objectives of ensuring the integrity and certainty of the public revenue for the benefit of the State and all Queenslanders.

(f) any other relevant factors

Nil.

BTR measure

The Land Tax Act imposes land tax on the taxable value of taxable land each financial year. Land tax is calculated by applying the applicable general rate of land tax to the total taxable value of the taxpayer's land. A 2 per cent surcharge rate applies to foreign companies, trustees of foreign trusts and absentees, in addition to the general rate.

The Duties Act imposes a duty surcharge (additional foreign acquirer duty (AFAD)) on transactions that are liable for transfer duty (amongst other things), where a foreign person acquires certain residential land in Queensland. AFAD is imposed at a flat rate of 7 per cent of the dutiable value of the transaction.

To implement the BTR measure, the Bill amends the Land Tax Act to provide a concession to reduce the taxable value of land used solely or primarily for an eligible BTR development by 50 per cent for the calculation of land tax at the general rate, and 100 per cent for the surcharge rate of land tax (collectively, the BTR land tax concessions). The Bill also amends the Duties Act to provide a concession to reduce the dutiable value of a foreign acquirer's interest in land for development of, or land containing, an eligible BTR development by 100 per cent for the

purposes of calculating AFAD for the relevant transaction (the BTR AFAD concession). The BTR land tax concessions and the BTR AFAD concessions are collectively referred to as the BTR concessions.

BTR operators who wish to access the BTR concessions will need to apply for the concessions, as well as provide the Commissioner with an annual declaration (for land tax purposes) that they have met and will continue to meet the requirements for the BTR land tax concessions.

To support this measure, the Bill also amends the Land Tax Act and Duties Act to impose an obligation on owners to notify the Commissioner:

- if the owner's intended use of the land, when the BTR concessions first applied to the land, changes;
- upon a change of ownership of the land for an eligible BTR development; and
- of certain events where the BTR AFAD concession has been claimed

(each, a notification requirement).

In some cases, notification of the above information may require the Commissioner to make a reassessment to remove the benefit of the BTR concessions.

While the BTR concessions are technically available to individuals, it is expected that the concessions will primarily be claimed by corporations and trustees of trusts, and will therefore have limited impact on the human rights of an individual. However, to the extent that an individual may access the BTR concessions, the human rights affected are property rights (section 24 of the Human Rights Act) and the right to privacy (section 25 of the Human Rights Act), these are discussed below.

(a) the nature of the right

As noted above, 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. 'Arbitrary' 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. 'Deprived' 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 BTR measure limits this right by imposing the notification requirements, with failure to comply without reasonable excuse constituting an offence under an existing provision of the Administration Act, with a maximum penalty of 100 penalty units. Further, upon the Commissioner being notified of certain events, the Commissioner may be required to make a reassessment to remove the benefit of the BTR concessions.

As noted above, 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 BTR measure limits this right by requiring applicants to provide the Commissioner with certain information about their affairs when they initially apply for the BTR concessions, when they declare each year (for the purposes of the BTR land tax concessions) that they have met, and will continue to meet, the requirements for the concessions, and to comply with the notification requirements.

(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 BTR measure is to support the provision of long-term, stable and secure housing for citizens, including providing affordable housing at a discounted rent. Consequently, to ensure that the concessions are appropriately targeted, there are a number of eligibility requirements that must be met. Further, some of the concessions (for example, the BTR AFAD concession) may be claimed upfront at the time the land for the BTR development is acquired, and before the land has been developed or is operating as an eligible BTR development. In these circumstances, the BTR AFAD concession will be applied on the basis of a declaration made by the applicant of their intention to satisfy the requirements for an eligible BTR development, including that the applicant:

- will build an eligible BTR development on the land by 30 June 2030;
- will not sell or subdivide the land prior to building an eligible BTR development on it; or
- will maintain at least 5 consecutive years of entitlement to the land tax concessions from the date the land tax concessions first applied to the land (5-year consecutive period); and
- will not sell or subdivide the land within the 5-year consecutive period

(collectively, the BTR AFAD requirements).

In the event that an applicant who has received a BTR AFAD concession fails to comply with the above requirements, the applicant will be required to notify the Commissioner to enable a reassessment to be made to remove the benefit of the concession and impose any applicable AFAD, penalty tax and UTI. Without a mechanism to reassess, an applicant could access the benefit of the BTR AFAD concessions at the time of the transaction, without having any intention to comply with the requirements, and effectively avoid having to pay AFAD on the transaction.

Once an eligible BTR development is operational, eligibility for the BTR concessions must be continuously maintained. Consequently, notification is required upon a change of owner to enable the outgoing owner to confirm their compliance with the requirements up to the change of ownership. The purpose of this requirement is to avoid the incoming owner having to declare to matters that occurred prior to their ownership, and for which they may not have knowledge or information to be able to make an accurate declaration.

Similar to the notification requirements referred to above, the purpose of the requirements for applicants to provide information about their affairs when applying for the concession, or as

part of an annual declaration, is to ensure that the BTR concessions only apply to applicants who meet the relevant requirements. Further, it enables the Commissioner to reconsider an applicant's eligibility for the concession where their circumstances have changed, or to remove the concession when the eligibility requirements have not been met.

Although non-compliance with the requirements for the BTR concessions may be identified through compliance activities, the purpose of the above requirements is to ensure the Commissioner is alerted to circumstances affecting an applicant's eligibility for the concessions and enable any additional tax liabilities to be reassessed in a prompt and timely way.

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

- the BTR concessions are only available in limited and appropriate circumstances, where relevant requirements have been met, noting the purposes of the concessions;
- applicants who claim the BTR AFAD concession 'upfront' are subject to the same eligibility requirements as applicants who satisfy the relevant requirements first and then request that the Commissioner make a reassessment to refund the relevant amount of AFAD; and
- community expectations are met that, where the BTR concessions have been claimed by applicants who fail to satisfy the relevant requirements, there is an appropriate framework in place to facilitate the Commissioner removing the benefit of the concessions, discourage non-compliance with the notification requirement, and ensure the protection of public revenue.

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

Where an applicant fails to satisfy the requirements for the BTR concessions and a reassessment occurs to remove the benefit, property rights will necessarily be impacted to the extent that the applicant is required to pay further tax, penalty tax and UTI. This is consistent with the general operation of the Administration Act (i.e. penalty tax and UTI are imposed automatically upon a reassessment which increases a taxpayer's liability). The Commissioner may potentially wholly or partially remit penalty tax or UTI on a reassessment on a case-by-case basis, having regard to all relevant facts and circumstances. Further, failure to comply with the notification obligation will necessarily affect the property rights of an applicant to the extent that a penalty is imposed for commission of an offence.

The notification obligation and the requirements to apply for the concession and make an annual declaration for the land tax concessions necessarily impact the right to privacy of applicant, by requiring the applicant to disclose to the Commissioner information about their personal affairs. This information is needed to enable the Commissioner to determine an applicant's eligibility for the concession.

(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 BTR measure.

As noted above, the nature of the BTR concessions means that eligibility tests for the concessions will necessarily and appropriately involve determining whether an applicant is operating an eligible BTR development on a continuous basis. If the concessions could only be claimed after certain of the requirements were satisfied, then, compared to allowing applicants to claim particular concessions upfront (and needing to comply with the relevant notification requirements):

- there would be less of an impact on an applicant's property rights, in that:
 - penalty tax and unpaid tax interest would not be imposed if the applicant did not satisfy the BTR AFAD requirements (because no reassessment to remove the concession would be required); and
 - no offence would be committed by failing to notify the Commissioner that the requirements had not been satisfied;
- there would potentially be less of an impact on the right to privacy of an applicant who did not satisfy the requirements, as the applicant would not be required to notify the Commissioner because the applicant would not be applying for the concessions; and
- the impacts on the right to privacy of an applicant who did satisfy the requirements would largely be the same, as the applicant would still be required to notify the Commissioner of such satisfaction and apply for the concessions.

The BTR measure anticipates that where an applicant is a foreign person, they would apply for the BTR AFAD concession at the time of acquiring the land for the BTR development. However, it is open to an applicant who is a foreign person to wait until after certain requirements relating to the BTR AFAD concession have been satisfied before requesting that the Commissioner reassess the applicant's AFAD liability to apply the benefit of the concession (noting that, under the Administration Act, the Commissioner is not obliged to make a reassessment which decreases the applicant's AFAD liability). That is, it is a choice for each applicant as to whether they wish to accept the impact on their property rights and right to privacy associated with claiming the BTR AFAD concession 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 human rights, taking into account the nature and extent of the limitation

In my opinion, the potential impact of the BTR measure on an individual's property rights and the right to privacy is outweighed by the benefits to the State and citizens in ensuring the build to rent concessions are only available as intended.

In reaching this view, it is significant that:

- the BTR measure is beneficial as it supports provision of long-term, stable and secure housing for citizens, including affordable housing at a discounted rent;
- it is not mandatory for someone to apply for the BTR concessions, that is, BTR operators are free to choose whether to access the concessions or not;

- an applicant to whom a notification requirement applies can mitigate or avoid impacts on their property rights by complying with relevant requirements within the specified timeframe;
- the consequences for non-compliance with a notification requirement are consistent with the consequences for failing to comply with similar existing obligations under the Land Tax Act and Duties Act; and
- while the BTR concessions are technically available to individuals, it is expected that the concessions will primarily be claimed by corporations and trustees of trusts, and will therefore have limited impact on the human rights of an individual.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Revenue Legislation Amendment Bill 2023 is compatible with human rights under the Human Rights Act because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE CAMERON DICK MP
TREASURER
MINISTER FOR TRADE AND INVESTMENT

© The State of Queensland 2023