

Revenue Legislation Amendment Bill 2024

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable David Janetzki MP, Treasurer, Minister for Energy and Minister for Home Ownership

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, 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 amendments to be moved during consideration in detail 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 Bill

Foreign surcharge amendments

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

The amendments to be moved during consideration in detail will amend the *Duties Act 2001* (Duties Act), *Land Tax Act 2010* (Land Tax Act) and *Taxation Administration Act 2001* (Taxation Administration Act) to ensure the provisions imposing additional foreign acquirer duty, differential land tax rates and thresholds for absentees and the absentee surcharge, and the land tax foreign surcharge in Queensland's revenue legislation apply as intended.

Distributor-retailer amendments

The Bill retrospectively declares infrastructure charges schedules under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (the SEQ Water Act) as properly made. The Bill also validates associated decisions and actions and charges notices and agreements. This is necessary to resolve irregularities in the process followed by the boards of distributor-retailers in adopting the infrastructure charges schedules and making decisions related to this. The amendments will put beyond doubt that the infrastructure charges schedules were properly adopted and are valid, along with related decisions and actions, such as levying

an adopted charge, issuing infrastructure charges notices and entering into agreements about said notices.

Human Rights Issues

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

Foreign surcharge amendments

In relation to the foreign surcharge amendments, in my opinion, the human rights under the *Human Rights Act 2019* (Human Rights Act) that are relevant are property rights (section 24 of the Human Rights Act).

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

Distributor-retailer amendments

In relation to the distributor-retailer amendments, in my opinion, the right to fair hearing (section 31) of the Human Rights Act could be viewed as being limited by the proposed amendments to the SEQ Water 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*)

Foreign surcharge amendments

In Queensland, foreign persons who acquire, or own, land in Queensland may be subject to certain foreign surcharges and differential rates and thresholds for land tax. The surcharges and differential rates and thresholds include:

- a duty surcharge (additional foreign acquirer duty (AFAD));
- a higher general rate of land tax and lower exemption threshold (compared to individuals other than absentees) and surcharge rate of land tax if a foreign individual is an absentee; and
- a land tax foreign surcharge (LTFS) if the foreign person is a foreign company or trustee of a foreign trust;
(collectively, foreign surcharges).

There has been uncertainty about the interaction of non-discrimination clauses in certain international double taxation agreements (DTAs), which are given the force of law under the *International Tax Agreements Act 1953 (Cth)* (ITA Act), with the imposition of State foreign surcharges.

In response to that uncertainty, on 8 April 2024, the Australian Government implemented amendments to the ITA Act to clarify that non-discrimination clauses in DTAs do not apply to taxes other than income tax and fringe benefits tax (Commonwealth amendment). The Commonwealth amendment clarifies and ensures that State laws imposing certain taxes, such as state and territory property taxes, are consistent with the DTAs.

The Commonwealth amendment applies retrospectively for taxes payable or in relation to tax periods ending on or after 1 January 2018.

The amendments to be moved during consideration in detail to the Bill will validate the retrospective operation and imposition of the foreign surcharges in relation to liabilities arising on or after 1 January 2018 and before 8 April 2024, to align with the Commonwealth amendment.

The foreign surcharge amendments may limit the human right of property rights (section 24 of the Human Rights Act).

(a) the nature of the right

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 not to 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 in 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 or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

The right to bring an action (whether for a monetary amount or otherwise) is considered to be a property right. As such, the foreign surcharge amendments will limit an individual’s property rights by removing the basis for any restitutionary claims seeking a refund of potentially invalidly imposed foreign surcharge liabilities which arose on or after 1 January 2018 and before 8 April 2024.

(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 Commonwealth amendment clarified that the non-discrimination clauses in DTAs only apply to income tax and fringe benefits tax. The retrospective nature of the amendment supports that this was the intended scope and operation of these clauses under the ITA Act and that they were not intended to affect a State’s ability to impose property taxes, including foreign surcharges.

Removing the basis for any restitutionary claims seeking a refund of potentially invalidly imposed foreign surcharge liabilities which arose on or after 1 January 2018 and before 8 April 2024 is considered necessary to align with the Commonwealth amendment and restore the intended operation and imposition of the foreign surcharge provisions under Queensland’s revenue legislation.

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

If a Court considers there is an inconsistency between State and Commonwealth laws, this may lead to a finding under section 109 of the Australian Constitution that the State laws imposing the foreign surcharges are invalid. A finding of invalidity would in turn give rise to a restitutionary right for the refund of amounts of foreign surcharge paid to the State.

As such, by validating the operation and imposition of the foreign surcharges as proposed, this will necessarily affect the right to property as it will remove the basis for any such restitutionary claims. However, confirming that foreign surcharge liabilities arising during this period are payable in accordance with what the State always intended and providing certainty about the operation of the foreign surcharge provisions in Queensland's revenue legislation is consistent with the overall policy objective of the amendments.

(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 reasonable ways available to achieve the purpose of the amendments.

The amendments are intended to align with the Commonwealth amendment, by clarifying the imposition and operation of the foreign surcharge provisions under Queensland's revenue legislation, where the liability for the foreign surcharge arose on or after 1 January 2018 and before 8 April 2024. The amendments do not seek to alter how the foreign surcharges generally apply (for example, to increase the rate or base of the surcharges), rather it will confirm that the foreign surcharges apply to all foreign persons who acquire, or own, land in Queensland in the manner that was always intended under Queensland's revenue legislation, irrespective of their nationality. The amendments are considered to be proportionate and, as they will support the integrity of the public revenue, for the purpose of achieving a legitimate aim.

Removing the basis for any restitutionary claims seeking a refund of invalidly imposed foreign surcharge liabilities paid which arose on or after 1 January 2018 and before 8 April 2024 does not give rise to an arbitrary deprivation of a person's property and there is a public interest in ensuring certainty of Queensland's revenue legislation and the public revenue for the State.

(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 amendments on an individual's property rights is outweighed by the benefits of restoring the intended operation and imposition of the foreign surcharge provisions under Queensland's revenue legislation for all taxpayers.

In reaching this view, it is significant that the amendments confirm the application of the foreign surcharges as they were always intended by the State to apply and aligns with the intent of the Commonwealth amendment.

Further, there is a compelling public interest in ensuring the foreign surcharge provisions apply as intended, providing certainty of the public revenue for the benefit of the State and all Queenslanders, and in clarifying the imposition of the foreign surcharges.

(f) any other relevant factors

Nil.

Distributor-retailer amendments

(a) the nature of the right

Fair hearing provides that a person who is party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing (section 31 of the Human Rights Act).

Fair hearing is drawn from article 14(1) of the International Covenant on Civil and Political 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 Bill, if enacted, will validate infrastructure charges schedules adopted by distributor-retailers, along with related decisions made by the board about an adopted charge or automatic increase provision for an adopted charge or levying of adopted charges, including in reliance of an automatic increase provision.

The Bill will also declare that anything done or to be done in relation to said are valid. Examples of things done or to be done include the levying of adopted charges, including any automatic increase that applies to the adopted charges, and the adoption of a water netserv plan that includes the charges in the charges schedule.

It could be argued that this declaratory provision would prevent review and appeal of charges on the grounds that the charges levied and/or receipted were not valid at the time. This could be viewed as placing a limitation on the right to a fair hearing.

Charges fund necessary upgrades to water and sewerage infrastructure to support new urban developments. The public relies upon water and sewerage infrastructure keeping step with growing demands that are placed on it. It is in the public interest to ensure Parliament's intent of declaring charges valid is not displaced through review and appeal. If displacement were to occur at scale, this would impact distributor-retailers who deliver vital water and sewerage services to community and ultimately add to the cost of water bills for SEQ customers. Water bills could increase by 7.5 per cent or an average of \$78 per household. This would impact on households who are already dealing with a cost-of-living crisis. The proper purpose of the limitation to be imposed by the Bill is to ensure that this does not occur.

- (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 Bill, if enacted, would declare that the levying of an adopted charge or automatic increase in the levied charges is, and has always been, valid. The Bill will also validate infrastructure charges notices purportedly given and an agreement purportedly entered into in relation to said notice. In practical terms this would prevent a person from seeking internal review or making an appeal on the grounds that the charges were not valid immediately prior to the commencement of the provisions. This provision places a limitation on a person's right to a fair hearing. It would prevent them from seeking a review of a decision or seeking to appeal a decision through a tribunal or by bringing a proceeding to the relevant court on these grounds. This limitation achieves the proper purpose by ensuring challenge cannot be brought in relation to whether the charges were valid.

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

There are no other ways of achieving the purpose of the Bill. The Bill does not prevent a person from seeking internal review or making an appeal generally, only on the grounds that the charges were not valid at the time that they were levied.

- (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

While the Bill if enacted would prevent a review and appeal on certain grounds, these grounds are very narrow in focus.

Despite the need to make declarations about the adoption and validity of the infrastructure charges schedules, the charges levied on developers were correct. Developers will not be worse off and will not be charged more than they were intended to under the SEQ Water Act under this proposal.

Certainty about the adopted infrastructure charges schedules, and the charges levied, is necessary for distributor-retailers, their owner councils, distributor-retailer customers and the broader SEQ community alike.

Levied charges contribute to the provision of essential water and sewerage trunk infrastructure that services SEQ community growth.

- (f) any other relevant factors

Nil.

Conclusion

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

THE HONOURABLE DAVID JANETZKI MP
TREASURER
MINISTER FOR ENERGY AND MINISTER FOR HOME OWNERSHIP

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