



HOUSING, BIG BUILD AND MANUFACTURING SUBCOMMITTEE

Members present:

Mr CG Whiting MP—Chair
Mr JJ McDonald MP (virtual)
Mr DJ Brown MP
Mr MJ Hart MP (virtual)
Mr RI Katter MP (virtual)

Staff present:

Ms S Galbraith—Committee Secretary
Dr V Lowik—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE HELP TO BUY (COMMONWEALTH POWERS) BILL 2024

TRANSCRIPT OF PROCEEDINGS

Monday, 13 May 2024

Brisbane

MONDAY, 13 MAY 2024

The subcommittee met at 10.02 am.

CHAIR: Good morning. I declare open this public briefing for the subcommittee's inquiry into the Help to Buy (Commonwealth Powers) Bill 2024. My name is Chris Whiting. I am the member for Bancroft and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share. With me today are: Jim McDonald, member for Lockyer and deputy chair, via teleconference; Don Brown, member for Capalaba; and Michael Hart, member for Burleigh, via videoconference. We will be joined later by Robbie Katter, the member for Traeger, via teleconference.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the subcommittee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the subcommittee is a serious offence. I also remind members of the public that they may be excluded from the briefing at the discretion of the subcommittee. I remind subcommittee members that departmental officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the subcommittee's media rules and the chair's discretion at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or on social media pages. Please turn your mobile phones and computers off or to silent mode.

CHENG, Mr Tony, Director, Department of Housing, Local Government, Planning and Public Works

HARVIE, Ms Kirstine, General Manager, Department of Housing, Local Government, Planning and Public Works

McALLISTER, Ms Danielle, Deputy Director-General, Policy, Performance and First Nations, Department of Housing, Local Government, Planning and Public Works

WRIGHT, Ms Ange, Executive Director, Department of Housing, Local Government, Planning and Public Works

CHAIR: Welcome. I invite you to brief the subcommittee after which we will have some questions for you.

Ms McAllister: Good morning. I would also like to commence by acknowledging the traditional owners of the land on which we meet today, the Turrbal and the Yagara people, and by paying my respects to their elders past, present and emerging. We thank the subcommittee for the opportunity to provide a briefing on the Help to Buy (Commonwealth Powers) Bill 2024.

Queensland, like other states and territories across the country, is currently facing unprecedented challenges in the housing sector. The government remains committed to ensuring every Queenslanders has access to safe, secure and affordable housing. In February the Queensland government introduced Homes for Queenslanders, a comprehensive strategy structured around five pillars designed to address different aspects of our housing system. This is a whole-of-system plan because we know that there is not one solution to these challenges but, rather, a multitude of levers that need to be pulled. Homes for Queenslanders spans across improving market supply, home ownership, the rental sector, social and affordable housing, and responses to homelessness.

An important component of this plan is pillar 3, which focuses on helping first home owners into the market. This initiative recognises the difficulties faced by first home buyers, particularly young people and First Nations Queenslanders, in entering the housing market. To address these challenges, the Queensland government has explored various solutions including doubling the first home buyer grant and increasing financial loan support in regional Queensland. Importantly, we are also working with the Australian government to deliver the Help to Buy scheme to assist aspiring homeowners in Queensland which is of course why we are here today.

The department has been working on the necessary legislation to ensure the scheme can be implemented swiftly and effectively in Queensland. The objective of this bill is to help Queenslanders gain access to the scheme through appropriate referral legislation, allowing the scheme to operate efficiently within our state once it is established. Further, this bill aligns with the Homes for Queenslanders plan, demonstrating Queensland's commitment and progress to addressing our housing challenges. The federal Help to Buy scheme, announced as part of the 2022-23 federal October budget, is a shared equity program designed to help low- to middle-income earners purchase homes. Homeowners will need a minimum of two per cent deposit, with the Commonwealth providing an equity contribution of up to 40 per cent for new homes and up to 30 per cent for existing homes. The scheme will be open to 10,000 eligible Australians each year and is expected to run for four years. The shared equity arrangements will be funded, administered and monitored by Housing Australia.

In August 2023, the Prime Minister and the Minister for Housing, Minister for Homelessness and Minister for Small Business, Minister Collins, announced that all states and territories agreed to progress legislation so that Help to Buy can run nationally. The Commonwealth bill was introduced to the House of Representatives in November 2023 and is currently before the Senate for debate. On 18 April 2024, the Senate Economics Legislation Committee tabled its report on the Commonwealth bill. The report recommended that the Senate pass the Commonwealth bill and the Help to Buy (Consequential Provisions) Bill 2023. Overall, submissions to the inquiry indicated broad support for the Commonwealth bill and the establishment of the scheme, viewing it as an ongoing commitment to assist low- and middle-income Australians in attaining home ownership.

The report highlighted two key matters: the scheme's potential positive contribution to housing policies targeting supply and ownership; and concerns regarding potential inflationary impacts. However, due to the relatively small numbers of this scheme and the overall size of the Australian residential property market, the scheme has been carefully calibrated and is not anticipated to have a significant inflationary impact on home purchase prices. The Commonwealth is seeking to operationalise the scheme as early as possible in the second half of 2024.

The Commonwealth bill will be enacted in reliance on section 51(xxxvii) of the Australian Constitution. That section allows the Commonwealth parliament to make laws with respect to matters referred to it by the states. The Queensland bill will refer the necessary matters to the Commonwealth parliament. In other words, once enacted, the effect of the Queensland bill will be to give the Commonwealth parliament the power to enact the Commonwealth bill. Queensland must pass the bill before the Commonwealth bill can be passed to support the constitutional basis to establish the scheme. Once the Commonwealth bill is passed, other states can similarly refer legislative power to the Commonwealth parliament or adopt the Commonwealth legislation to enable the scheme to operate in their jurisdiction. The scheme will also operate in the territories from commencement of the Commonwealth bill, pursuant to section 122 of the Australian Constitution.

On 13 March this year in a joint statement, Minister Collins and the Minister for Housing, Local Government, Planning and Public Works, Minister Scanlon, announced that Queensland will be the first jurisdiction to progress state legislation to deliver the scheme. The Queensland bill is a text-based referral of legislative power, which has the advantage over a broader subject-based referral as it allows the Queensland parliament to consider the Commonwealth bill. This provides the greatest certainty regarding the extent of the Commonwealth parliament's legislative power. It means that the Commonwealth parliament will only have power to enact a law in the same terms as the text set out in Queensland's referral. The Commonwealth law may be later amended, but Queensland's referral only includes power to make amendments with respect to certain matters. There is no risk that the Commonwealth might rely on the referral to enact a different law which the Queensland parliament has not approved. This referral covers three specific matters: primary, residual and amendment matters. Any or all of those matters may be terminated at any time by proclamation from the Governor, and this would change the status of the state in relation to the scheme and appropriately safeguard Queensland's interests.

The functions and powers of Housing Australia will apply in different ways to the states with different status including: participating states, cooperating states and withdrawal states. Being a participating state enables full participation of eligible homebuyers with the scheme. A cooperating state is a state which has terminated its primary referral and no longer enables full participation of new participants in the scheme, but it ensures existing participants can continue to be supported. A withdrawn state is a state which has terminated its residual referral or amendment referral. The operation of the Commonwealth legislation in a withdrawn state does not depend on the state's referral but on the Commonwealth's other legislative powers. No new participants from that state can join the scheme, and existing participants are only able to continue to the extent an existing contractual arrangement is in place at the time the state becomes a withdrawn state. This structure will protect home owners' interests should Queensland's involvement in the scheme change over time.

As outlined in the department's written briefing, the Help to Buy program directions will govern the operational arrangements for the Help to Buy scheme and are a matter for the Australian government. The program directions will sit under the Commonwealth legislation and outline the Commonwealth minister's expectations to assist Housing Australia to implement and administer the scheme, including eligibility criteria and participant obligations. The Commonwealth has released an exposure draft of the Help to Buy program directions, with consultation closing on 21 May 2024. The department, in conjunction with all other relevant government agencies, is in the process of reviewing those program directions to provide our feedback. This consultation is open to the public. I would encourage anyone with an interest to have a look and provide feedback to the Commonwealth.

Overall, the bill is a strategic step towards enhancing housing affordability and accessibility in Queensland. I acknowledge that it is a quite technical bill. On that note, I and my colleagues welcome any questions from the subcommittee.

CHAIR: Thanks. I will lead off with my questions. One of the things that has struck me with reading this bill is that it is a process that many committees such as ours have not needed to deal with or fully understand. For us, it is a good exercise in actually understanding what the referral powers are. For a start, the term 'referral' has different meanings in different public spheres. When we are dealing with local government, 'referral' can often mean a complaint has been made to the Independent Assessor. When you say 'referral' with that it means one thing, but in this aspect here 'referral' means essentially a passing on or a delegation of powers to make a specific bill. Have I got that right?

Ms McAllister: Yes. That seems quite a good overview, I would say, Chair.

CHAIR: Thank you. What does the Constitution specifically say? You mentioned 51(xxxvii), where the Commonwealth can make laws on matters referred by the state. What does the Constitution specifically point out in this case?

Ms McAllister: A state must first refer a matter to the Commonwealth parliament under section 51 of the Australian Constitution to enable passage of the Commonwealth bill and then support the Constitutional basis to establish, in this scenario, this particular scheme. Ange can go into more detail. It is quite technical which is why we have got Ange and the other support officers here.

Ms Wright: Section 51 of the Australian Constitution establishes the powers of the federal parliament and what matters it can make legislation or laws on. Section 51(xxxvii) of the law states—

... matters referred to the Parliament of the Commonwealth by ... Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred ...

Essentially, the Queensland bill will provide the Commonwealth power to make legislation in relation to the matters that are referred to it in the Queensland bill.

CHAIR: Being a text-based referral, it is quite specific. I understand you can refer matters and that is a bit more general, but this one is very specific about how our powers are being passed on or delegated.

Ms Wright: Yes. That is the benefit of a text-based referral such as what is included in the Queensland bill: it is very much limited. The Commonwealth's legislative power in relation to that referral is limited to the text in the Queensland bill.

CHAIR: I understand that Queensland is going to be the first cab off the rank to do this. What are the real benefits of that?

Ms McAllister: That means that, once the Commonwealth parliament passes their bill, Queensland will be ready to go. The benefit is that we will not need to then wait for the state to pass our own legislation or do the referral because we will be ready. That will mean that our community,

our people who are looking to participate in the scheme, can immediately put their hand up, consider their eligibility and make an application.

Mr HART: I have been here nearly 13 years and I have not seen a bill like this before where we are referring this power off to the feds to make legislation on our behalf. Are there any other bills the Deputy Director-General can point to where we have done this?

Ms McAllister: This is quite a unique bill that we are taking forward. There are other situations, and I am thinking about early childhood. There is legislation in early childhood where there is consistent legislation across the nation that all states and territories have signed up to. As to the form that that has taken, our legal advice has been that that was quite a different process, different legislation. As far as I am aware, this is unique. Over 13 years there have been a number of matters in relation to fair work, water and de facto couples. There is some legislation in relation to terrorism and other legislation as well. There are examples, but I think this particular legislation is unique.

Mr HART: I have seen bills where Queensland has been the instigator of a national bill—that is, we have put it to the Queensland parliament and it has been basically copied in every other parliament. Are we doing it this way because the federal government is paying the bill? Is that the point of it?

Ms McAllister: They certainly are. There is no actual cost in relation to this scheme for Queensland. It will absolutely be funded, administered and monitored by the Commonwealth government. In that respect, yes, we are just enabling this scheme through the legislation because of the Constitutional arrangements that exist.

Mr HART: So Queensland is not putting any money at all into this?

Ms McAllister: Not into this particular scheme, no.

Mr HART: And this was introduced in the federal parliament in November?

Ms McAllister: Yes, that is right.

Mr HART: Did it have to get to a certain stage before the states were able to start putting their legislation in place to enable them to utilise this fund, or have we just got to this now?

Ms McAllister: It needed to be introduced in the Commonwealth parliament, but that is really the point where they needed another jurisdiction to come on board to enable it constitutionally. They have gone through the committee process in the Commonwealth parliament and—

Mr HART: So we are the guinea pig, are we?

CHAIR: Member for Burleigh, you might want to use a different term than that. We are the instigator or the first ones.

Mr HART: So we are the first state to do it to set the pace for everyone else?

Ms McAllister: Yes.

Mr HART: With this text-based form of the bill, are we copying what the federal government has done or are we doing something that suits Queensland that maybe the other states will not follow? How much input are we having?

Ms McAllister: We have been reviewing the text that is in the Commonwealth bill and considering it in all regards but particularly from the state's perspective to ensure that the state is not limited in any way that would not be appropriate. The text referral in the Queensland bill does differ slightly from the text in the Commonwealth Help to Buy Bill that is in the Senate at the moment. That is to ensure the appropriate protections of the state's interests in referring these matters to the Commonwealth.

The differences are in the provisions of the Commonwealth bill dealing with potential inconsistencies between the Commonwealth and state laws, and it enables the state to declare matters to be excluded matters to which the scheme does not apply. It also declares that a state provision is a displacement provision for the purposes of the scheme. That has the effect that the Commonwealth law will not apply if it is inconsistent with the state provision. Again, that is coming back to really ensuring that we have got the protection of the state's interests.

We have gone through significant legal review and advice on this, given the technicality of it, but we have full assurance that these are common provisions included in referral legislation to really ensure that there are those appropriate mechanisms for addressing any inconsistencies and interactions between the provisions of the Commonwealth and the state bills. We have negotiated those amendments with the Commonwealth, going back and forth with them to ensure that we were getting the text that we needed included in our bill. That will obviously go through the processes here

in Queensland, and then the Commonwealth will need to amend their bill that they currently have before their parliament to align it exactly with ours.

Mr HART: Will every other state have to do that as well, as in align with our bill, or can they have different versions? How long is this all going to take?

Ms Wright: Any state can choose to either adopt the Commonwealth legislation once it is passed by the federal parliament or make their own referral on their own terms from their parliaments. Essentially, as a state does refer those matters to the Commonwealth, once the Commonwealth scheme is up and running those states would be taken to be participating states and the scheme could operate within that jurisdiction. I guess that is the benefit of the approach that we are taking as opposed to a mirror type of legislative approach—that is, the scheme can commence operating in jurisdictions as those respective parliaments refer those powers or matters to the Commonwealth.

Mr HART: So there could be six or seven different versions of this process?

Ms Wright: No. We would not expect that to be the case. The scheme would continue to operate as it is intended under the Commonwealth legislation. We would imagine that, for a state to be part of the scheme, the text needs to be the same. We would anticipate that there would not be many changes—

Mr HART: So it would be the same?

Ms Wright: Yes.

Mr HART: In relation to a withdrawn state, how does that affect somebody's equity if the state decides to withdraw down the track? Can they keep their equity and keep the process going, or does it need to be terminated and everything go back to normal?

Ms McAllister: No. If Queensland became a withdrawn state, any existing Queensland participants in the scheme would continue to the extent that they have an existing contractual arrangement in place at that time. Any changes to the scheme made by the Commonwealth after a state becomes a withdrawn state would not apply to those participants, so the arrangements that they had in place when they actually signed up would continue.

Mr BROWN: The way we are setting it up it seems to me like we are hoping that ours gets passed first and then obviously theirs so it would then give Queenslanders the best opportunity in that first year to be eligible for the 10,000 spots. Is that correct?

Ms McAllister: Yes, that is right.

Mr BROWN: By doing it this way, it means that from day dot we can have the best opportunity to have the greatest share of that 10,000 across Australia. Is the scheme limited and we only get, say, 2,000 out of the 10,000, or can we get more than that if enough eligible applicants apply?

Ms McAllister: Yes. There are allocations being identified by the Commonwealth. That exposure draft of the program guidelines or program directions is putting that in place where Queensland would receive its place allocation by population relative to the total Australian population. That would be around 2,000 places for Queensland. What would happen is, after eight months that the scheme had been in operation, any places that had not been reserved for states that had not come on as a participating state would be transferred into a general pool and then that could then be made available to any applicants from other participating states. Again that benefit of being first and ready to go would mean that we could really ensure that Queenslanders could get the best allocation of places overall.

Mr BROWN: That is good. Queenslanders are probably ready to go as well. They probably want to get their hands on their first home, so the earliest opportunity to me seems common sense as well. If the bill does not get passed in federal parliament, do we have to do anything with our bill or does it just sit there for a period of time?

Ms Wright: Essentially if the bill does not pass the federal parliament the Queensland bill can remain on the statute book; it just will not have any effect until the Commonwealth passes legislation. It would then be a matter for the state to determine whether it chose to continue the referral or to terminate the referral.

Mr BROWN: But there is no time limit if it sits on the statute book?

Ms Wright: There is no time limit, but there would need to be a positive action taken by the state to terminate.

Mr HART: Deputy Director-General, on the eligibility criteria, is that going to be contained in a regulation or is it written in the legislation? What happens if the criteria should change because there is not enough uptake, there is too much uptake or whatever and we need to move the eligibility

criteria? Does that need to come back to every state or is that set by the federal government? How is that going to work?

Ms McAllister: As I mentioned in my opening statement, those program directions will sit under the Commonwealth legislation and will outline eligibility and a whole range of matters. It is subject to the outcomes of that public consultation that needs to occur. If there was to be any amendment to those program directions, that would have to be in negotiation with states and territories.

Mr HART: If it is not in a regulation but in legislation, it would have to go back to passing parliament again?

Ms Wright: If I may clarify, member: the Commonwealth will establish the eligibility criteria and other operational matters relating to the operation of the scheme through a legislative instrument made under the Commonwealth Help to Buy Bill. They are the program directions that the Deputy Director-General has indicated the Commonwealth is currently undertaking public consultation on. We anticipate that there will be an intergovernmental agreement that will be made between the Commonwealth and participating parties under the agreement which would include material about how consultation would need to be undertaken if an amendment was proposed to either the governing acts or legislative instruments made underneath those acts.

Mr HART: I am not really across how the federal government deals with subordinate legislation. Is a direction subordinate legislation in federal parliament like our regulations here?

Ms Wright: It is similar to our regulations here, yes. It is an instrument made by the minister that operates similarly to what our regulations do.

Mr HART: Does it have power over Queensland?

Ms Wright: It only affects the participants in the scheme. It is really about how the Commonwealth or Housing Australia on behalf of the Commonwealth will administer and implement the scheme. It indicates a range of matters. Section 46 of the Commonwealth bill indicates that the Commonwealth cannot make a legislative instrument if a state objects. Queensland's legislative interests are very well protected by both the Commonwealth bill and the Queensland bill.

Mr HART: As far as an objection goes, does that go to the minister or does that come to the parliament?

Ms Wright: Under the IGA we understand that that would be a matter notified to the relevant ministers who are parties to the agreement and then that would obviously need to undertake the normal government processes in terms of how those matters are dealt with.

CHAIR: More subordinate legislation for us. Member for Traeger, do you have a question?

Mr KATTER: No, thank you, Mr Chair.

CHAIR: There being no further questions, that concludes the briefing. There are no questions on notice. Thank you to everyone who has participated today. Thank you to Hansard. Thank you to our secretariat. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public briefing closed. Thank you.

The subcommittee adjourned at 10.36 am.