STATEMENT OF COMPATIBILITY

Charter of Human Rights and Responsibilities Act 2006

State Taxation Acts Amendment (Relief Measures) Bill 2020

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the Charter), I make this statement of compatibility with respect to the State Taxation Acts Amendment (Relief Measures) Bill 2020.

In my opinion, the State Taxation Acts Amendment (Relief Measures) Bill 2020 (the Bill), as introduced to the Legislative Council, is compatible with the human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.

Overview


Key features of the Bill include:

- amending the Duties Act to provide a 50% duty concession for eligible purchases of commercial or industrial property in certain local government areas;
- amending the First Home Owner Grant Act to extend the $20,000 grant payable for eligible transactions in regional Victoria for a further one year period, being transactions with a commencement date between 1 July 2020 and 30 June 2021;
- amending the Payroll Tax Act to reduce the payroll tax rate to 1.2125% for regional employers in certain local government areas, with effect from 1 July 2019; and
- amending the Taxation Administration Act to enable the Commissioner of State Revenue (Commissioner) to provide emergency tax relief introduced by the State of Victoria in response to an emergency.

Human rights issues

The bulk of the amendments made by the Bill do not engage the human rights listed in the Charter because they either do not affect natural persons, or they operate beneficially in relation to natural persons. However, the following human right contained in the Charter has been identified as being engaged:

- the right to a fair hearing, as protected under section 24 of the Charter
For the reasons outlined below, in my opinion, the Bill is compatible with the Charter.

Fair hearing (section 24(1))

Section 24 of the Charter provides for the right to a fair hearing. Clause 11 of the Bill introduces new Part 9A into the Taxation Administration Act. Part 9A gives the Commissioner the power required to implement emergency tax relief measures. The State of Victoria may announce tax relief in response to an emergency, such as a natural disaster, epidemic or pandemic, or an act of terrorism that threatens the health and safety of Victorians.

Proposed section 95D provides that no cause of action shall accrue in respect of any matter arising out of Part 9A. To the extent that proposed section 95D precludes a natural person from commencing litigation as a result of anything done or omitted to be done in respect of taxation relief under Part 9A, the right to a fair hearing is engaged and may be limited.

However, any limitation on the right to a fair hearing is reasonable and necessary to ensure the efficient administration of Part 9A, where powers will be exercised in extraordinary circumstances to give effect to emergency tax relief measures that operate beneficially for affected taxpayers.

No cause of action must arise in respect of the exercise of powers under Part 9A because the decisions made under this Part are made, or will be made, in response to significant emergencies, requiring the immediate action of the State, the Treasurer and the Commissioner to respond to urgent needs. The decisions made will operate for the benefit of recipients of emergency taxation relief. Providing a cause of action in relation to such decisions adds a level of formality and revision that is unsuited and inappropriate to the context in which such decisions are made. Decisions made under Part 9A are also likely to be iterative in nature and there may be sequence of decisions with a cumulative effect. The effects of the decisions made under Part 9A are intended to be beneficial in relation to recipients of emergency taxation relief.

Finally, providing no cause of action will ensure that taxpayers cannot attempt to exploit Part 9A as a way of circumventing the exclusive code for the resolution of taxation disputes in Parts 4 and 10 of the Taxation Administration Act.

Retrospectivity: Section 27

Section 27 of the Charter is concerned with the retrospective operation of criminal laws. It provides that a person has the right not to be prosecuted or punished for things that were not criminal offences at the time they were committed.

There are measures that operate retrospectively in the Bill, being the amendment to the Payroll Tax Act to reduce the payroll tax rate to 1.2125% for regional employers in certain local government areas, with effect from 1 July 2019, and proposed section 95B enabling the Commissioner to give effect to emergency tax relief measures whether the public
announcement by the State has been made before the commencement of Part 9A. However, these amendments operate for the benefit of affected taxpayers, and therefore do not remove or limit rights under the Charter retrospectively.

**Conclusion**

For the reasons given in this statement, I consider that the Bill is compatible with the *Charter of Human Rights and Responsibilities Act 2006*.

Jaclyn Symes MP

Minister for Regional Development
Tabling of Statement of Compatibility

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, I table a statement of compatibility for the *State Taxation Acts Amendment (Relief Measures) Bill 2020*.

Second Reading Speech

I move that this Bill now be read a second time.

I am pleased to introduce this bill which amends Victoria’s taxation laws including the *Duties Act 2000, Payroll Tax Act 2007, First Home Owner Grant Act 2000* and *Taxation Administration Act 1997*.

This is an important bill for Victorians as it gives effect to the Government’s 2019-20 bushfire relief package announced in February 2020. It also gives the Commissioner of State Revenue the statutory authority to give effect to emergency tax relief measures announced by the Government both now and in the future. The Bill will also support first home buyers in regional Victoria, extending the regional First Home Owner Grant that is currently scheduled to cease on 30 June 2020 until 30 June 2021.

Bushfire initiatives

On 2 and 3 January 2020, the Premier declared a state of disaster due to the bushfire emergency we saw this past Summer. The State of Disaster was declared in relation to six local government areas and Alpine Resorts in Victoria. This includes the Alpine Shire, East Gippsland Shire, Mansfield Shire, Towong Shire, Wangaratta Rural Shire, Wellington Shire and four Alpine Resorts. These areas are referred to as the State of Disaster LGAs.

The Bill will give effect to tax relief measures announced by the Andrews Government in response to the devastating fire season in the summer of 2019-20.

One of these measures is the reduced payroll tax rate for regional businesses introduced in the *2019-20 Budget* for regional employers in the State of Disaster LGAs. The Bill provides that payroll tax will apply at the reduced rate of 1.2125 per cent for regional employers in the State of Disaster LGAs. For Victorian regional businesses in the affected areas, this halves the current payroll tax rate of 2.425 per cent and will be backdated to apply from 1 July 2019.

The reduced rate for the State of Disaster LGAs applies until 30 June 2022. After this date, the reduced rate of 1.2125 per cent will apply for regional employers across Regional Victoria. This initiative provides payroll tax relief to around 400 regional employers in State of Disaster LGAs areas by enabling them to benefit immediately from the full reduction in the regional employer rate announced in the *2019-20 Budget*. This measure is expected to cost approximately $14.2 million over the budget and forward estimates period.
The Bill will also bring forward the stamp duty concession for regional commercial and industrial properties in regional Victoria announced as part of the 2019-20 Budget. The full 50 per cent discount for bushfire affected areas will be brought forward from 1 July 2023 to 27 January 2020 for properties in the State of Disaster LGAs. This will support people looking to open, move or expand a regional business in these areas, and support the economic recovery of these areas. This measure is expected to cost approximately $34 million over five years.

As with the measure announced as part of the 2019-20 Budget, the commercial or industrial status of a property will be determined by reference to the Australian Valuation Property Classification Codes. Property that is intended to be used solely or primarily for commercial, industrial, or extractive industry uses will qualify for the concession. The purchasers will be required to use the land solely or primarily for commercial or industrial purposes for a continuous period of at least 12 months, commencing within two years of the transfer.

First Home Owner Grant

We all know how difficult it is to purchase a home, particularly for young Victorians, who are faced with high house prices and the upfront costs associated with buying a home. That is why this government is amending the First Home Owner Grant Act 2000 to extend the First Home Owner Grant of $20,000 in regional Victoria until 30 June 2021. This is double the $10,000 grant for first home owners not in regional Victoria.

This extension for one year is consistent with the approach the Government has taken to the Supply Bill and the continuation of existing programs and concessions. The existing eligibility criteria will continue to apply. This measure is expected to cost approximately $33 million in 2020-21.

Commissioner Powers

The Bill also includes amendments to the Taxation Administration Act 1997 that will enable the Commissioner of State Revenue to deliver emergency tax relief introduced by the State of Victoria in response to an emergency, including the bushfire tax relief measures in relation to duty and payroll tax that are being legislated as part of this Bill. The changes give the Commissioner of State Revenue the statutory authority to take any action that is necessary to give effect to tax relief schemes announced by the Victorian Government in response to emergencies, such as health epidemics or natural disasters.

These powers can only be exercised at the direction of the Treasurer, and can only be favourable to the taxpayer. Emergency tax relief measures include the ability to defer, waive or refund all or part of a taxpayer’s tax liability under a taxation law, including penalties and interest, or employ a combination of measures. These changes are vital in the rapidly evolving environment that Victoria currently finds itself in.

I commend the bill to the house.