

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Reynolds v Commissioner Of State Revenue* [2024] QCAT
160

PARTIES: **MICHAEL REYNOLDS**
(applicant)

SHANNON REYNOLDS
(applicant)

v

COMMISSIONER OF STATE REVENUE
(respondent)

APPLICATION NO/S: GAR682-21

MATTER TYPE: General administrative review matters

DELIVERED ON: 11 April 2024

HEARING DATE: 13 February 2024

HEARD AT: Brisbane

DECISION OF: Member Poteri

- ORDERS:
- 1. The decision of the Commissioner Of State Revenue made on 25 June 2021 to reject the application of the Applicants for a First Home Owner Grant is set aside.**
 - 2. The First Home Owner Grant should be paid to the Applicants.**

CATCHWORDS: Where an application for a HomeBuilder grant has been made to the Commissioner pursuant to provisions of the *First Home Owner and Other Home Owner Grants Act 2000* (Qld) – where the Commissioner has decided that the contractual arrangements for the erection of the dwelling house do not satisfy the statutory requirements of the *First Home Owner and Other Home Owner Grants Act 2000* (Qld) and its subordinate legislation – Where the home owner alleges that the contract arrangements are contained in a comprehensive home owner building contract as required under the provisions of the *First Home Owner and Other Home Owner Grants Act 2000* (Qld) and its subordinate legislation

Electricity Safety Act 2002 (Qld), s 55, s 56

First Home Owner Grant and Other Home Owner Grants Act 2000 (Qld), s 25Q, s 59, s 60

Queensland Building and Construction Commission Act

1991 (Qld), s 67AZN, Schedule 1B s 3, s 5, s 14, s 40
Administrative Direction – Australian Government
HomeBuilder Grant Queensland dated 21 March 2021

Director of Public Prosecutions for the State of Victoria v
LE [2007] HCA 52
Cousens v Commissioner of State Revenue [2013] QCAT
 423
Superior Cabinets & Designs Pty Ltd v Vincent [2021]
 QCAT 336

APPEARANCES & REPRESENTATION:

Applicant: Self-represented
 Respondent: Ms G Hartridge instructed by the Commissioner of State Revenue

REASONS FOR DECISION

- [1] The Applicants, Michael Reynolds and Shannon Reynolds (*‘Reynolds’*, *‘the Reynolds’*) are the registered proprietors of land (*‘Property’*) situated at 5 Cescotto Close, Tolga. Tolga is a rural town on the Atherton Tablelands.
- [2] On 30 July 2020 Reynolds entered into a residential building contract - level 2 (*‘Contract’*) with Trevor Seawright (*‘Seawright’*) to erect a dwelling house (*‘Home’*) on the Property. Seawright is a licensed builder.
- [3] These proceedings relate to an application (*‘Application’*) made by Reynolds to the Commissioner of State Revenue (*‘Commissioner’*) for a HomeBuilder grant (*‘Grant’*) pursuant to the provisions of the *First Home Owner Grant and Other Home Owners Grants Act 2000 (Qld)* (*‘FHOG Act’*). On 25 June 2021 the Commissioner decided to reject the Application (*‘Decision’*). The Decision was confirmed in an internal review on 7 August 2021.
- [4] Reynolds has made an application pursuant to s 59 of the FHOG Act to the Tribunal for an external review of the Decision. Pursuant to s 60(2)(a) of the FHOG Act the Tribunal must hear and decide the review of the Decision by way of a reconsideration of the evidence that was before the Commissioner when the Decision was made unless the Tribunal considers that it is necessary in the interests of justice to allow new evidence. I will discuss this issue later.
- [5] The hearing of these proceedings was heard on 13 February 2024.

LEGISLATION, LEGAL ISSUES AND FIRST HOME GRANT SCHEME

- [6] The first home grant scheme (*‘Scheme’*) is a well publicised Scheme which was established between the Commonwealth and State governments to encourage and assist home ownership and to provide grants to eligible first home owners. The Scheme has been the subject of many decisions in the Tribunal. It is not necessary for me to outline all the facts and circumstances of the Scheme. In respect of the

applications for Grants, it is the Commissioner's position that all applicants must comply with all the legislative criteria of the Scheme to be entitled to a Grant.

[7] The relevant legal issues that are central to this review are:

- (a) Is the Contract an "eligible home builder transaction" as outlined in s 25Q of the FHOG Act? and
- (b) Is the Contract a "comprehensive home builder contract" as outlined in the provisions of the relevant administrative direction?

[8] The legislative provisions relevant to this review are outlined:

25Q Application for grant and when grant is payable

- (1) A person who is eligible to apply for a home builder grant under the home builder direction may apply for the grant.
- (2) An application for a home builder grant must comply with the home builder direction.
- (3) An applicant for a home builder grant is entitled to be paid the grant if—
 - (a) the applicant or, for a joint application, each of the applicants, complies with the eligibility criteria for the grant under the home builder direction; and
 - (b) the transaction for which the grant is sought is an eligible home builder transaction; and
 - (c) the relevant requirement in relation to the eligible home builder transaction has been met.

Note—

See also section 25R(2).

- (4) Only 1 home builder grant is payable for the same eligible home builder transaction.
- (5) In this section—

relevant requirement, in relation to an eligible home builder transaction, means—

- (a) if the transaction is a contract for the purchase of a new home within the meaning of the home builder direction—the contract has been completed within the meaning of the home builder direction; or
- (b) if the transaction is a comprehensive home building contract within the meaning of the home builder direction—the foundations have been laid and the first progress payment has been paid to the builder under the contract; or
- (c) if the transaction is a contract for a substantial renovation within the meaning of the home builder direction—construction under the contract has commenced and at least \$150,000 of the contract price has been paid to the builder under the contract.

**ADMINISTRATIVE DIRECTION – Australian Government
HomeBuilder Grant – Queensland - 1 March 2021 – Paragraphs 1b & 14**

Eligible transactions

1. Each of the following transactions are *eligible transactions* for payment of the grant:
 - b. a comprehensive home building contract made by the freehold owner of land in Queensland, or a person who will, prior to completion of the comprehensive home building contract be the freehold owner of land in Queensland, to have a new home built on the land, if the contract commencement date is between 4 June 2020 and 31 March 2021 (both dates inclusive), and the construction commencement date is on or after the contract commencement date and within 6 months of the contract commencement date.
14. *A comprehensive home building contract* means a contract under which a builder undertakes to build a home from the start of building work to the point where the home is ready for occupation and, if for any reason, the work to be carried out under the contract is not completed, includes any further contract under which the work is to be completed.

COMMISSIONER

- [9] The Commissioner was represented by Ms Hartridge of Counsel who assisted the Tribunal. Ms Hartridge advised the Tribunal that on the evidence that was before the Commissioner when the Decision was made, the Application satisfied all the criteria for the Grant, except that the contract arrangement(s) for the erection of the Home was not an eligible transaction because the contract arrangement was not contained in one comprehensive home building contract.
- [10] As the decision maker I intend to rely on the the investigations and enquiries of the Commissioner regarding the Reynolds satisfying all the criteria for a Grant, except the issue of the contract arrangement(s).
- [11] In regard to the contract arrangement(s), the Commissioner says that the electrical work for the Home was undertaken by Michael Peter Reynolds (*‘Peter’*) who is the father of Michael Reynolds (*‘Michael’*) for no payment under a separate contractual arrangement to the Contract. That is, the Contract is not an eligible transaction because the contract arrangement(s) for the erection of the Home, including the electrical fit out for the Home, was not contained in one comprehensive home building contract as set out in the Administrative Direction.

FURTHER EVIDENCE

- [12] Michael gave evidence by Teams. I found Michael to be a very unsophisticated person who did not have a full understanding of the legal concepts and issues involved in these proceedings. In giving evidence he raised the issue of Peter undertaking the electrical work as a sub contractor of Seawright. He stated that Peter was not paid any money for this work as this was a way of saving money. He stated that other electricians had quoted figures of between \$17,000 and \$20,000 to undertake the electrical work for the Home. He stated that as Peter was a licensed electrician he discussed using Peter to undertake the electrical fitout of the Home with Seawright. This is the reason why only the electrical items were included in

Part F of the Contract (see page 91 of the documents filed by the Commissioner on 7 February 2022).

- [13] Michael stated that Seawright agreed that Peter could undertake the electrical fit out under his supervision and as a subcontractor of Seawright.
- [14] At this point in the proceedings, I advised Michael that this is the first time that the issue of using Peter as a subcontractor of Seawright had been mentioned or disclosed. His response was very vague but he did acknowledge that this arrangement was agreed to orally. Because this issue was not mentioned previously I suggested that he should arrange to have Seawright and Peter give evidence by remote conferencing to clarify the issue.
- [15] After a break in the proceedings Michael stated that Seawright and Peter were available to give evidence. Ms Hartridge did not raise any objection to the provision of this further evidence.
- [16] Peter and Seawright gave evidence by remote conferencing. Both witnesses stated that Peter was a subcontractor of Seawright and Peter undertook the electrical fitout of the Home at no cost to Seawright. Both stated that these arrangements were agreed to orally. In fact, Seawright stated that most of his subcontract arrangements are undertaken orally. Seawright stated that he was very happy with the standard of Peter's work. A certificate (form 16) was signed by Peter on 19 July 2021. A final certificate (form 21) for the Home was signed by K Byrne on 26 July 2021. See pages 23, 24, 25 and 26 of the documents filed by the Commissioner on 7 February 2022.
- [17] Peter stated that he is a retired electrician and he still holds his electrical work licence which enables him to undertake work as an electrical fitter and mechanic. I made an order on 15 February 2024 requiring Peter to produce a copy of his electrical work licence. A copy of the licence was provided to the Tribunal on 15 February 2024. Peter's work licence is current until 23 June 2025.
- [18] Michael and Seawright both stated that the arrangement to use Peter to undertake the electrical fitout under the supervision and as a subcontractor of Seawright was agreed to orally. There was some conflict between the witnesses regarding the time that this agreement was reached. That is, before or after the Contract was executed on 30 July 2020.
- [19] Michael and the other witnesses confirmed that the Home has been completed, the Reynolds have taken possession of the Home and all the monies owed to Seawright under the Contract have been paid to him. All parties say that there has been full compliance regarding the contract arrangements for the erection of the Home.
- [20] I accept the evidence of Michael and all the witnesses. They all appeared to me to be providing their evidence in a straightforward and truthful way. Ms Hartridge did not raise any credibility issues with me regarding the witnesses.
- [21] The Commissioner made the Decision on the material and documentation provided by the Reynolds to the Commissioner. Michael did not explain why the subcontract arrangement with Peter was not disclosed to the Commissioner when the Reynolds made the application to the Commissioner or when the Commissioner sought further information about the electrical fit out when assessing the Application. It may be

because the Reynolds are not sophisticated or conversant with legal arrangements, which can be quite daunting at times.

[22] Now that further evidence has been adduced regarding the subcontract arrangements between Seawright and Peter, are the contract arrangements to erect the Home contained in one comprehensive home builder contract?

[23] Ms Hartridge raised a number of issues regarding the subcontract arrangements between Seawright and Peter at the hearing and in written submissions filed in the Tribunal on 28 March 2024. They are:

- (a) The Reynolds and Seawright orally agreed to vary the Contract to allow Seawright to engage Peter as a subcontractor to undertake the electrical fitout for the Home. This variation is contrary to clause 12 of the Contract and section 14 of Schedule 1B of the *Queensland Building and Construction Commission Act 1991* (Qld) ('QBCC Act').
- (b) Clause 12 of the Contract states that variations must be in writing and sets out a process for agreement of variations.
- (c) The terms of any contract can be varied or amended by the agreement or the acquiescence of the parties. In these proceedings both Seawright and The Reynolds gave evidence that there was an oral agreement to use Peter as a subcontractor to undertake the electrical fitout. They say that this work was completed satisfactorily.
- (d) The Contract is a level 2 regulated contract under the provisions of schedule 1B of the QBCC Act.
- (e) Sections 14(2) and (10) of Schedule 1B of the QBCC Act state the following:

14 Requirements for contract—level 2 regulated contract

...

- (2) The contract must be in a written form, dated and signed by or on behalf of each of the parties to it.

...

- (10) The contract has effect only if it complies with subsection (2).

- (f) It is apparent that there was a breach of these provisions in this legislation. What are the consequences? These provisions do not render the arrangements as illegal or void. The reason for the enactment of these provisions is for consumer protection. That is "the contract has effect only if it complies with subsection (2)". The failure to agree to any variations in writing makes enforcement of such variations difficult.
- (g) In these proceedings Seawright and the Reynolds are not alleging that the Contract or any variations to the Contract have no "effect". On the contrary they are stating that the terms of the Contract have been completed to the satisfaction of all stakeholders.
- (h) In the matter of *Superior Cabinets & Design Pty Ltd v Vincent* [2021] QCAT 336 at paragraph 19 Senior Member Brown says:

In the absence of a contract between the parties satisfying the requirements of s 13(5) of schedule 1B of the QBCC Act, I find that the agreement between the parties in respect of the kitchen works is of no effect and is not enforceable at the suit of either party.

This supports my view of the impact that a breach of this legislation may have on any variation of the Contract that was agreed to orally by the Reynolds and Seawright.

- (i) Section 40 of Schedule 1B of the QBCC Act states that a variation to a regulated contract must be in writing. A building contractor may face compliance action if there is a breach of s 40 of the QBCC Act. However this provision refers to possible breaches by the building contractor and makes no reference to any impact that this legislation may have on any variation or the contract.
- (j) The issue of there being no consideration passing in regard to the subcontract between Seawright and Peter has been raised by the Commissioner. I have been referred to the decision of the *Director of Public Prosecutions for the State of Victoria v LE* [2007] HCA 52. At paragraph 43 the court refers to the subject of consideration and specifically states “However, natural love and affection imports no such benefit”. I agree with the law outlined in this precedent. I am also of the view that a contract that has been entered into between two parties where no consideration has passed does not render that contract void or illegal. There may be difficulties in enforcing such a contract or taking action in regard to any breach of the contract. Notwithstanding these issues, Seawright, the Reynolds and Peter accept that the contract for the electrical fit out for the Home was carried out to the satisfaction of all stakeholders.
- (k) A subcontract does not need to be in writing and can be effected orally. Section 3(2) of Schedule 1B of the QBCC Act states that a domestic building contract does not include a subcontract between a contractor and a subcontractor. Section 5 of Schedule 1B of the QBCC Act states that a regulated contract is a domestic building contract. Section 14 of Schedule 1B of the QBCC Act only applies to regulated contracts.
- (l) The Commissioner has raised the issue of Peter not holding the appropriate licence to carry out the electrical fit out of the Home as a subcontractor of Seawright.
- (m) Electricians are licensed under the provisions of the *Electrical Safety Act 2002* (Qld) (*‘ES Act’*). The relevant provisions are ss 55 and 56 of the ES Act, outlined below:

55 Requirement for electrical work licence

- (1) A person must not perform or supervise electrical work unless—
 - (a) the person is the holder of an electrical work licence in force under this Act; and
 - (b) the licence authorises the person to perform the work.

Maximum penalty—400 penalty units.

- (2) Only an individual may be the holder of an electrical work licence.

- (3) A person is not required under subsection (1) to hold an electrical work licence for the purpose of the following—
- (a) performance or supervision of electrical work for the purpose of installing or repairing telecommunications cabling;
 - (b) performance or supervision of electrical work in practising the person's profession as an electrical engineer;
 - (c) performance or supervision of remote rural installation work;
 - (d) performance or supervision of electrical work as part of the testing of electrical equipment that the person is authorised to do under a regulation;
 - (e) performance, as an apprentice, of electrical work in a calling that requires the apprentice to perform electrical work;
 - (f) performance, as a trainee, of electrical work in a calling that requires the trainee to perform electrical work of a type prescribed under a regulation;
 - (g) performance, as a student, of electrical work as part of training under the supervision of teaching staff at—
 - (i) a university; or
 - (ii) a college, school or similar institution conducted or approved by a department of the State or of the Commonwealth.

56 Requirement for electrical contractor licence

- (1) A person must not conduct a business or undertaking that includes the performance of electrical work unless the person is the holder of an electrical contractor licence that is in force.
- Maximum penalty—400 penalty units.
- (2) Without limiting subsection (1), a person conducts a business or undertaking that includes the performance of electrical work if the person—
- (a) advertises, notifies or states that, or advertises, notifies or makes a statement to the effect that, the person carries on the business of performing electrical work; or
 - (b) contracts for the performance of electrical work, other than under a contract of employment; or
 - (c) represents to the public that the person is willing to perform electrical work; or
 - (d) employs a worker to perform electrical work, other than for the person.
- (3) However, a person does not conduct a business or undertaking that includes the performance of electrical work only because the person—
- (a) is a licensed electrical mechanic who—

- (i) performs electrical work for the person or a relative of the person at premises owned or occupied by the person or relative; or
 - (ii) makes minor emergency repairs to make electrical equipment electrically safe; or
- (b) contracts for the performance of work that includes the performance of electrical work if the electrical work is intended to be subcontracted to the holder of an electrical contractor licence who is authorised under the licence to perform the electrical work.
- (4) This section does not authorise the performance of electrical work by a person who does not have an electrical work licence for the work.
- (5) A person does not contravene subsection (1) if—
 - (a) the person conducts a business or undertaking that includes the performance of electrical work as a partner in a partnership; and
 - (b) the partnership is the holder of an electrical contractor licence that is in force.
- (n) Peter is the holder of a s 55 licence which is an electrical work licence (*‘work licence’*) which is current until 23 June 2025. On 19 July 2021 Peter certified the electrical fit out of the Home on a Form 16. As stated in the Commissioner’s submissions filed on 28 March 2024 there is a question regarding whether Peter should have an electrical contractors licence (*‘contractors licence’*) as outlined in s 56 of the ES Act and the potential impact of these proceedings.
- (o) Under paragraph 7 of the Direction a transaction is not an eligible transaction if the building work is not performed by a person who holds a licence to carry out building work under the provisions of the QBCC Act. In these proceedings Seawright holds the appropriate builder’s licence under the provisions of the QBCC Act.
- (p) Under paragraph 14(b) of the Direction there is a definition of when a comprehensive home building contract is completed. That is, when the building is ready for occupation as a home and a final certificate under the *Building Act 1975* (Qld) has been issued for the building. In these proceedings a final certificate (Form 21) was issued on 26 July 2021 by K Byrne, building certifier.
- (q) In issuing the final certificate for the Home, K Byrne would have perused and considered all the other relevant certificates (ie Form 16s) that would have been obtained by Seawright in the construction of the Home. This would have included the Form 16 signed by Peter on 19 July 2021 for the electrical fit out for the Home.
- (r) It is possible that Peter may be in breach of s 56 of the ES Act by subcontracting with Seawright to undertake the electrical fit out for the Home. That is he may be conducting a “business” as set out in s 56(1) of the ES Act.
- (s) I cannot make a definitive finding regarding this question. In any event this is a matter of possible compliance investigation and action by the authorities who administer the ES Act.

- (t) What I have before me in these proceedings is evidence in these proceedings is a Form 16 for the electrical fit out and a Form 21 for the completion of the Home. Prima facie I must consider these certificates as valid.

I have been referred to the decision *Cousens v Commissioner of State Revenue* [2023] QCAT 423 (*Cousens*). At paragraphs 55 and 56 of *Cousens* Member Olding makes a comment about the unlawfulness of carrying out building work without the appropriate licence. See s 42 of the QBCC Act. A breach of s 42 of the QBCC Act may result in compliance action and penalties being imposed. I agree with that position. In *Cousens*, the issue was whether a particular entity was licenced to carry out the building work. There is a different scenario in these proceedings. However, the central point in *Cousens* is that to be eligible for a grant, an applicant must demonstrate that their application strictly complies with the provisions of the FHOG Act and the Direction. This includes the specific requirements set in paragraphs 7 and 14(b) of the Direction where the building work must be performed by a licenced builder and a final certificate (Form 21) has issued to show that the building is ready for occupation as a home. This is the case in these proceedings.

FINDINGS

- [24] The Contract, including the electrical fit out for the Home, is contained in one comprehensive home building contract.
- [25] The combined value of the Property, the value of the electrical fit out and the amount paid to Seawright do not exceed the cap of \$750,000 set out in paragraph 5 of the Direction.
- [26] The Home was completed by a licenced builder as required under paragraph 7 of the Direction.
- [27] A final certificate (Form 21) for the Home was issued on 26 July 2021 as required under paragraph 14(b) of the Direction.
- [28] I accept that the Application of Reynolds complies with all the other relevant laws.
- [29] I propose to order that the Decision is set aside and the Grant should be paid to the Reynolds.