

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Edwards v Commissioner for State Revenue* [2023] QCAT  
413

PARTIES: **DALE MAREE EDWARDS**  
(applicant)

v

**COMMISSIONER FOR STATE REVENUE**  
(respondent)

APPLICATION NO/S: GAR099-22

MATTER TYPE: General administrative review matters

DELIVERED ON: 31 October 2023

HEARING DATE: 29 March 2023

HEARD AT: Brisbane

DECISION OF: Member Richard Oliver

ORDERS: **The Decision of the respondent is confirmed**

CATCHWORDS: TAXES AND DUTIES AND HOME OWNERS GRANT  
– ADMINISTRATIVE DIRECTION – QUEENSLAND –  
where applicant entered into a building contract with a  
builder for the construction of a new home – where the  
applicant engaged a separate contractor to supply and  
install kitchen cabinetry independent of the building  
contract – whether building contract was a comprehensive  
contract as defined in clause 14 of the Administrative  
Direction – whether builder undertook all of the building  
work under the contract.

*Queensland Civil and Administrative Tribunal Act 2009* s  
20

*First Home Owner Grant and Other Home Owner Grants  
Act 2000* (Qld),

*Commissioner for State Revenue v Taske* [2023] QCATA  
121

APPEARANCES &  
REPRESENTATION:

Applicant: Self-Represented

Respondent: Ms Amos of counsel instructed by Mr Malby of the  
respondent

## REASONS FOR DECISION

- [1] On 23 November 2020 Ms Edwards entered into a building contract (“the contract”) with Stephen Thorne, a registered builder, for the construction of a new home at Gympie. The contract price was \$212,025 inclusive of GST. Part F of the written contract set out the “owner supplied items” which included “kitchen cabinetry sink & mixer”. Ms Edwards was also to supply the wall and floor tiles but that is not relevant to this review.
- [2] Ms Edwards decided to supply the kitchen cabinetry to provide work for a local a cabinet maker, Gympie Cabinet Makers, because the builder would have used a cabinet maker on the Sunshine Coast. There is no dispute the cabinetry was supplied and installed by Gympie Cabinet Makers during the build and completed on 2 August 2021. The appliances for the kitchen, cooktop and oven were supplied by the builder.
- [3] As the building contract was entered into between 4 June 2020 and 31 March 2021, it attracted the Commonwealth’s HomeBuilder Grant administered under the *First Home Owner and Other Home Owner Grants Act 2000* (Qld). That is, for an eligible transaction and compliance with the Administrative Direction (“the Direction”) issued jointly by the State Government and the Australian Government, a homeowner can receive a grant of \$25,000 for a new home.
- [4] Ms Edwards applied for the grant on the basis that she had met all of the criteria under the Direction. On 3 February 2021, after a review, the Commissioner rejected the application. The Commissioner contends the contract was not an “eligible transaction” under the Direction because:
- (a) A comprehensive home building contract is defined in paragraph 14 of the Administrative Direction to mean 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.
  - (b) The usual indicia of a home includes a kitchen, which must, at a minimum, meet the national requirements prescribed under the National Construction Code to have a ‘kitchen sink and facilities for the preparation and cooking of food’<sup>1</sup> which was not supplied by the builder.
- [5] Ms Edwards then filed an application to review that decision in the Tribunal. She relied on the above reasons for challenging the decision of the Commissioner, which was that she tried to support a local business and she would suffer extreme hardship if the grant was not made available to her. In essence what she is submitting is that the obligation on the builder was to build a home from the start to the point where it was ready for occupation, but a third party would supply the kitchen cabinets.
- [6] The Tribunal’s function under s 20 of the *Queensland Civil and Administrative Act* is to produce the correct and preferable decision. That is review all of the material

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<sup>1</sup> s 21 documents page 4: objection decision paragraph [9]

and produce a decision independent of that of the Commissioner. In other words, as has often been said, stand in the shoes of the Commissioner.<sup>2</sup>

[7] In addition to the submissions made to the Commissioner in support of the application for the grant, Ms Edwards filed a further statement explaining the circumstances of entering into the contract with Mr Thorne and also produced some new evidence, being a statement from Mr Thorne and Gympie Cabinetmakers confirming their involvement in the project. No objection was taken to the new evidence so I propose to admit it, but it doesn't change the basic ground for rejection by the Commissioner, which is that the building contract did not satisfy the definition in the Direction.

[8] To be eligible for the grant, the contract has to be an eligible transaction which is defined in paragraph 1(b):

A comprehensive home building contract made by the freehold owner 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.

[9] The Commissioner contends that this is not an eligible transaction because the subject contract is not a "comprehensive home building contract" as it does not satisfy the definition set out in paragraph 14 of the Direction.

A comprehensive home building contract means a contract under which a builder undertakes to build a home from the start of the 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.

[10] The Commissioner submits that the reason it does not satisfy the definition is because the definition does not contemplate a home owner contracting with a third party to supply an essential component of building work outside of the principal contract with the builder, that is here, the kitchen cabinetry.

[11] In *Commissioner of State Revenue v Taske*<sup>3</sup> the Appeal Tribunal conclusively decided that where a home owner contracts with a third party to undertake an essential part of the building work, the home owner falls foul of the definition. In that case the Taskes contracted with a third party to supply and install tiling and undertake the waterproofing in the wet areas of the house during the course of the construction of their new home. This came about because the builder could not supply the particular tiles that the Taskes wanted. This building work was an essential part of the building work to satisfy the definition but was excluded under the building contract. The Taskes applied for the grant which was rejected because the Commissioner was not satisfied that, with the exclusion of the tiling and waterproofing, the building contract was a 'comprehensive building contract' within the definition. The Taskes applied for review of the decision in the Tribunal and

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<sup>2</sup> *Kehl v Board of Engineers* [2010] QCATA 58

<sup>3</sup> [2023] QCATA 121

were successful on having the Commissioner's decision set aside. However on appeal, that decision was reversed. Judicial Member Forrest concluded on the facts that:

I am satisfied that the pre-requisites for "a comprehensive home building contract" were not met in the contract between the Respondent and her husband and the builder or otherwise. There is no eligible transaction and the grant is not payable to the Respondent and her husband .

- [12] The circumstances here, unfortunately for Ms Edwards, are on all fours with *Taske*. With the kitchen cabinetry removed, an essential part of the build, the building contract with Mr Thorne is not a comprehensive building contract within the definition. As such, it is not an eligible transaction to attract the grant and therefore the Commissioner's decision must be confirmed.