Betting Tax and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Betting Tax and Other Legislation Amendment Bill 2022 (the Bill).

Policy objectives and the reasons for them

Sustainable funding model for the Queensland racing industry

The main objective of the Bill is to provide for a more sustainable funding model for Queensland's racing industry, primarily by amending the *Betting Tax Act 2018* (Betting Tax Act), from 1 December 2022, to:

- introduce a 5 per cent racing levy in addition to the 15 per cent betting tax rate;
- incorporate free bets into the calculation of betting tax; and
- provide for the hypothecation of 80 per cent of annual betting tax revenue to the Racing Queensland Board (Racing Queensland).

The Bill also makes associated amendments to the *Racing Act* 2002 (Racing Act). The policy objective for these amendments is to ensure that country thoroughbred race meetings in Queensland receive a minimum amount of funding, as a portion of the hypothecated betting tax revenue paid to Racing Queensland under the Betting Tax Act.

Racing Queensland is established under the Racing Act. Its primary function is to be the control body for the three codes of racing: thoroughbred racing, harness racing; and greyhound racing. Under section 11 of the Racing Act, the board must perform its primary function in a way that is in the best interests of the codes of racing collectively, while having regard to the interests of each individual code.

The powers of the Board are provided for under section 12 and 82 of the Racing Act and include all the powers necessary for performing its function; discharging the obligations imposed on the control body under this Act or another Act; and distributing funding to clubs licensed by a control body to hold race meetings for its code of racing for a purpose relating to the operations of the club.

As part of a new funding model for Queensland thoroughbred racing, amendments are being made to the Betting Tax Act as part of the Bill to require that for a financial year in which betting tax is assessed, an amount equal to 80 per cent of betting tax revenue for that financial year be paid to Racing Queensland.

Under the current section 12 of the Racing Act, Racing Queensland must pay an amount that is at least 5.32 per cent of its net UBET product fee for each year as prize money for non-UBET thoroughbred races conducted during that year by non-UBET thoroughbred clubs. The "UBET product fee" is the fee paid by Tabcorp through the Queensland Product and Program Deed.

Under the new funding model, the Queensland Product and Program Deed will be terminated, and there will be no "UBET product fee" paid by Tabcorp to Racing Queensland. The requirement for Racing Queensland to pay the amount specified under the current section 12 will no longer apply.

To replace the payment of the portion of the net UBET product fee that is paid under the current section 12 under the new funding model, a portion of the hypothecated betting tax revenue paid to Racing Queensland under the Betting Tax Act, is to be used to fund country thoroughbred race meetings conducted under the racing calendar.

To provide for this, amendments will be required to the Racing Act to require Racing Queensland to provide at least a minimum level of funding for country thoroughbred race meetings, and to require the amount to be indexed annually, with the minimum amount and the rate or method of indexation to be prescribed in the *Racing Regulation 2013* (Racing Regulation).

Mental health levy – administrative, machinery and transitional arrangements

The *Revenue Legislation Amendment Act 2022* (Revenue Legislation Amendment Act) amended the *Payroll Tax Act 1971* (Payroll Tax Act) with effect from 1 January 2023 to impose a mental health levy in relation to taxable wages (for payroll tax purposes) paid or payable from that date. Those amendments established the framework for the mental health levy, including the thresholds at which it becomes payable, how the levy is to be calculated and the responsibility for payment of the levy and lodgement of returns.

The Explanatory Note to the Revenue Legislation Amendment Bill 2022 (Explanatory Note) noted that as the Queensland Revenue Office (QRO) prepared for implementation of the mental health levy, it would be necessary to further develop administrative, machinery and transitional arrangements in relation to the levy.

QRO has identified that a number of further amendments to the Payroll Tax Act are required to support an orderly transition to, and appropriate ongoing administration of, the levy from 1 January 2023.

The Bill amends the Payroll Tax Act for this purpose, so that the mental health levy framework that will commence on 1 January 2023 reflects the new administrative, machinery and transitional arrangements.

Achievement of policy objectives

Amendment of the Betting Tax Act

The Betting Tax Act imposes betting tax on the taxable wagering revenue of betting operators for particular periods at the 'taxing rate'. The taxing rate is defined as an amount, of not more

than 15 per cent, prescribed by regulation; or if an amount is not prescribed by regulation – 15 per cent. As no taxing rate is currently prescribed by regulation, the rate is 15 per cent. The Bill amends the definition of 'taxing rate' to apply a discrete racing levy at a rate of 5 per cent, from 1 December 2022. This effectively raises the taxing rate to 20 per cent.

Taxable wagering revenue, on which betting tax is imposed, is the total wagering revenue of the betting operator for the period less the total eligible payments of the betting operator for the period. That is, amounts received by betting operators for bets minus payments made by betting operators for the bets. Free bets are not currently included in the calculation of taxable wagering revenue.

A 'free bet' is a bet made wholly or partly using an amount (a 'free component') that is provided to the person making the bet by the betting operator with whom the bet is made and is not immediately redeemable by the person for cash. The Bill amends the Betting Tax Act to incorporate free bets into the calculation of taxable wagering revenue, from 1 December 2022.

The Bill also amends the Betting Tax Act to provide for the hypothecation of 80 per cent of total annual betting tax revenue (including the racing levy) to Racing Queensland. This will require the Treasurer, in respect of a financial year in which betting tax is assessed, to pay an amount equivalent to 80 per cent of betting tax revenue during that financial year to Racing Queensland.

As the amendments commence on 1 December 2022, part-way through the 2022-23 financial year, the Bill provides for transitional arrangements relating to the imposition of the racing levy and hypothecation of betting tax.

For the 2022-23 financial year, the taxing rate for the 'annual betting tax amount' (which is used to determine a betting operator's annual liability for the financial year) is 17.9 per cent (transitional taxing rate). This rate was determined by having regard to the number of days in the financial year that the current 15 per cent taxing rate and new 20 per cent taxing rate apply, to produce a weighted taxing rate. This means that for the July to November monthly returns, betting operators will be paying betting tax at 15 per cent, and paying 20 per cent for the December to June monthly returns. However, for the purposes of the annual reconciliation in the annual return for 2022-23, betting operators will be subject to the transitional taxing rate of 17.9 per cent.

In relation to hypothecation of betting tax revenue, for the 2022-23 financial year, Racing Queensland will receive 80 per cent of betting tax revenue attributable to December to June.

Amendment of the Racing Act and Racing Regulation

The Bill amends the Racing Act and Racing Regulation to provide that:

- Racing Queensland must pay a minimum amount of the hypothecated betting tax revenue which the Treasurer will be required to pay to Racing Queensland under the Betting Tax Act to fund country thoroughbred race meetings;
- the Racing Act will authorise a minimum amount to be paid for the country thoroughbred race meetings to be prescribed in a Regulation and indexed annually by a prescribed percentage;
- the Racing Regulation will prescribe the minimum amount and indexation percentage;

- Racing Queensland must publish a country thoroughbred racing program as part of its racing calendar; and
- Racing Queensland must include in its annual report, prepared under section 63 of the *Financial Accountability Act 2009*, information about the country thoroughbred racing program, including: the thoroughbred races included under the country thoroughbred racing program; and the funding provided to country thoroughbred race meetings.

Amendment of the Payroll Tax Act

As a result of amendments made by the Revenue Legislation Amendment Act, from 1 January 2023 the Payroll Tax Act will impose a mental health levy on employers, or groups of employers for payroll tax purposes (groups), with annual Australian taxable wages over $10 million. In this context, 'Australian taxable wages' means wages that are either taxable wages (being taxable wages under the Payroll Tax Act) or interstate wages (being wages that are taxable wages under the payroll tax legislation of another Australian state or territory).

As foreshadowed in the Explanatory Note, in the lead-up to 1 January 2023 QRO has been preparing for the implementation of the mental health levy. The Bill contains a number of amendments to the Payroll Tax Act from 1 January 2023 which are considered to be necessary to ensure an orderly transition to, and for appropriate ongoing administration of, the mental health levy.

Importantly, none of these amendments alter the key elements of the mental health levy as already established by the Revenue Legislation Amendment Act, such as the wages that are subject to the levy, the rate at which the levy is imposed, or who is responsible for its payment. Further, those amendments do not alter the permitted use of the proceeds of the levy, being the provision of services and infrastructure that are consistent with the main objects of the *Mental Health Act 2016* or implementing the guiding principles in sections 5(2) to 5(5) of the *Queensland Mental Health Commission Act 2013*.

Periodic thresholds

Under provisions of the Payroll Tax Act which will commence on 1 January 2023:

- an employer is required to pay the mental health levy in a periodic return period on that portion of the employer's taxable wages that exceeds the primary periodic threshold for the period, and at a higher rate on that portion of the employer's taxable wages that exceeds the additional periodic threshold for the period;
- the primary periodic threshold and the additional periodic threshold (collectively, the periodic thresholds) for an employer for a periodic return period are to be calculated as a proportion of the employer's adjusted primary threshold and adjusted additional threshold (respectively) for the financial year – for example, for an employer with a monthly periodic return period, the primary periodic threshold for a particular periodic return period in a financial year is one-twelfth of the adjusted primary threshold for that financial year;
- the adjusted primary threshold and adjusted additional threshold are to be determined with reference to estimates of the taxable wages and interstate wages paid or payable during the financial year by the employer (if the employer is not a member of a group

(a non-group employer)) or by the group (if the employer is a member of a group (group member)); and
- the mental health levy will be payable on a periodic basis and subject to an annual reconciliation.

That framework does not contemplate the periodic thresholds varying at any point during a financial year, nor does it explicitly state the time at which those thresholds are to be calculated (i.e. the time at which the estimates of the taxable wages and interstate wages which form the basis of the adjusted primary threshold and adjusted additional threshold are to be made). Further, the Payroll Tax Act does not address the situation where the Commissioner of State Revenue (the Commissioner) forms the view that an employer's estimates of taxable wages and interstate wages are inappropriate or unreasonable (with a consequential impact on the appropriateness of the periodic thresholds).

To address these issues, the Payroll Tax Act is amended to provide that the periodic thresholds are:

- the thresholds for the period determined by the Commissioner; or
- if the Commissioner has not made such a determination – the amount worked out with reference to the periodic thresholds formulae, as at the most recent calculation day. The definition of 'calculation day' ensures that the periodic thresholds for the remaining periodic return periods in a financial year are recalculated in particular circumstances, such as where an employer joins or leaves a group or estimates that there will be a significant change in their total taxable wages or taxable wages and interstate wages for the financial year.

The ability for the Commissioner to determine periodic thresholds is akin to the Commissioner's existing power to determine an employer's fixed periodic deduction for payroll tax purposes. In particular, the Payroll Tax Act will not prescribe the circumstances in which the Commissioner may make such a determination.

As the Commissioner may make (or revoke) a determination in respect of a periodic return period for which an assessment of the employer's levy liability has been made, the Payroll Tax Act is amended to facilitate appropriate reassessments being made to give effect to the making or revocation of a determination.

Periodic levy liability

The Payroll Tax Act provides that an employer is not required to lodge a periodic return for the last periodic return period of a financial year. As the payment of payroll tax for a periodic return period is linked to the lodgement of a return for that period, the Payroll Tax Act expressly provides that there is no periodic liability for payroll tax for the last periodic return period of a financial year.

Similarly, from 1 January 2023 the payment of mental health levy for a periodic return period will be linked to the lodgement of the periodic return for that period.

The Payroll Tax Act is amended to clarify that, consistent with the approach for payroll tax, there is no periodic liability for the levy for the last periodic return period of a financial year. Mental health levy attributable to taxable wages paid or payable by an employer for that last

period return period will be taken into account as part of the calculation of annual levy liability for the financial year.

Impact of final returns on annual levy liability

Under provisions of the Payroll Tax Act which will commence on 1 January 2023, taxable wages and interstate wages payable by an employer during a financial year which were included in a final levy return lodged by the employer during the year are to be excluded in determining the employer's liability for the mental health levy for a financial year. This is designed to prevent the same wages being subject to the levy twice.

To better give effect to this principle, the Payroll Tax Act is amended to ensure that taxable wages and interstate wages that have previously been reflected in a final return lodged within a financial year are not included in the annual calculation of mental health levy, irrespective of who lodged the final return and who paid the wages. For instance, where an employer becomes a member of a group, the employer is required to lodge a final return which includes the wages for the part of the financial year prior to becoming a group member. These amendments will ensure that such wages are not included when the designated group employer (DGE) for the group is determining its annual levy liability.

The Payroll Tax Act is also amended to ensure a consistent approach between the calculation of annual levy liability and final levy liability in relation to adjusting the annual thresholds.

Provision of information

Under provisions of the Payroll Tax Act which will commence on 1 January 2023, for an employer who is a member of a group (group member):

- the employer's periodic thresholds are determined with reference to the total estimated taxable wages and interstate wages of all group members;
- the annual mental health levy liability of the DGE is determined by reference to the total taxable wages and interstate wages of all group members (including the DGE), and the total periodic levy payments made by such group members;
- where a change of status (as defined) happens for a group member other than the DGE (a non-DGE group member), the DGE is required to lodge a final return in relation to the mental health levy, with such return stating (amongst other things) the wages that were paid or payable by each group member for the relevant period.

To support these obligations, the Payroll Tax Act is amended to explicitly require the provision of particular information by non-DGE group members to the DGE, and by the DGE to non-DGE group members, within specified timeframes. Failure to provide information as required, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units, which is consistent with the maximum penalty for other failures to comply with notification obligations under the Payroll Tax Act.

The Payroll Tax Act is also amended to authorise (but not require) the Commissioner to disclose certain information to a DGE, being information previously provided to the Commissioner by another DGE for the group.

Final return lodgement by DGE

As noted, under provisions of the Payroll Tax Act which will commence on 1 January 2023, a DGE is required to lodge a final return in relation to the mental health levy where a change of status happens for a non-DGE group member, no later than 21 days after the change of status occurs. That final return is specified as being in relation to taxable wages paid or payable by the relevant non-DGE group member, but must also state the wages paid or payable by all group members.

The Payroll Tax Act is amended to:

- change the time by which the DGE is required to lodge a final return in relation to a change of status for a non-DGE group member, to reflect the timeframes being prescribed in the abovementioned amendments relating to the provision of information by non-DGE group members to the DGE; and
- clarify that the final return lodged by the DGE must relate to taxable wages paid by all members of the group, not just the employer for whom the change of status occurred.

Application of funds

Under a provision of the Payroll Tax Act which will commence on 1 January 2023, amounts attributable to the mental health levy may be used only for providing a service or infrastructure that is consistent with the main objects stated in section 3(1) of the *Mental Health Act 2016* or the guiding principles stated in sections 5(2) to 5(5) of the *Queensland Mental Health Commission Act 2013*.

The Payroll Tax Act is amended to clarify that those purposes relate only to the mental health levy itself, and not amounts associated with the levy such as unpaid tax interest (which arises when levy is not paid by the due date).

Application of existing Payroll Tax Act provisions to mental health levy

For ease of administration, so far as is possible but with some exceptions, the mental health levy is intended to be administered on the same basis as payroll tax (i.e. through periodic, annual and final returns).

The Payroll Tax Act is amended to apply certain existing provisions to the mental health levy as well as payroll tax.

Consequences of particular conduct

The Payroll Tax Act provides that an employer who engages in certain conduct in relation to payroll tax (such as failing to lodge a return, or avoiding or attempting to avoid payroll tax), commits an offence or may have a penalty imposed by the Commissioner.

The Payroll Tax Act is amended to provide similar outcomes for similar conduct in relation to the mental health levy.

Transitional provisions

Under provisions of the Payroll Tax Act which will commence on 1 January 2023, periodic, annual and final mental health levy liabilities are calculated, and returns are lodged, with direct or indirect reference to a financial year.

As the relevant provisions of the Payroll Tax Act in relation to the mental health levy will commence on 1 January 2023, and the mental health levy is only payable in relation to wages paid or payable from that date, the Payroll Tax Act is amended to appropriately deal with liability for the levy commencing partway through the 2022-23 financial year.

The Payroll Tax Act is also amended to require the provision of particular information by non-DGE group members to the DGE, and by the DGE to non-DGE group members, by specified dates during January 2023 as a transitional measure. As with the ongoing requirements to provide information, failure to provide information as required by the transitional provisions, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units.

Alternative ways of achieving policy objectives

Amendment of the Betting Tax Act

The Betting Tax Act specifies the taxing rate for betting tax and provides for how betting tax is calculated. Accordingly, imposing a racing levy and incorporating free bets into the calculation of betting tax can only be achieved by legislative amendment. Additionally, legislating hypothecation of betting tax revenue to Racing Queensland will provide certainty of funding.

Amendment of the Racing Act and Racing Regulation

Racing Queensland is established under the Racing Act, and its powers and functions are prescribed under that Act. The policy objectives in relation to payment of funds to country thoroughbred race meetings by Racing Queensland can only be achieved through legislative amendment.

Amendment of the Payroll Tax Act

The policy objectives of the Bill relating to the administrative, machinery and transitional arrangements in relation to the mental health levy can only be achieved by legislative amendment.

Estimated cost for government implementation

Amendment of the Betting Tax Act

Implementation costs are expected to be met from within approved budget allocations.

Amendment of the Racing Act and Racing Regulation

The amendments will ensure a minimum amount of $20 million be paid to country thoroughbred race meetings by Racing Queensland, indexed by 2 per cent annually.

Amendment of the Payroll Tax Act

Implementation costs are expected to be met from within approved budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential inconsistencies are discussed below.

***Betting Tax Act – transitional taxing rate – legislation should not adversely affect the rights and liberties of individuals, or impose obligations, retrospectively* (*Legislative Standards Act 1992*, s 4(3)(g))**

Section 4(2)(a) of the *Legislative Standards Act 1992* (Legislative Standards Act) requires that legislation has sufficient regard to the rights and liberties of individuals.

Section 4(3) of the Legislative Standards Act provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, amongst other things, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively (section 4(3)(g)).

The racing levy will be imposed from 1 December 2022. This means that for 2022-23, betting operators will pay betting tax at the current rate of 15 per cent in the July to November monthly returns and 20 per cent in the December to June monthly returns.

However, betting operators are required to lodge an annual return at the end of the financial year to determine their annual liability. The annual liability is determined by applying the taxing rate to the amount by which the taxable wagering revenue of the betting operator for the financial year is more than the annual threshold amount. As the racing levy and the increase to the taxing rate occurs part way through a financial year, a transitional taxing rate of 17.9 per cent will apply for 2022-23.

The transitional taxing rate may be seen as retrospectively changing the taxing rate prior to 1 December 2022. Although betting operators will be liable at the 17.9 per cent rate for the first five months of 2022-23, they will benefit by also being liable for 17.9 percent for the remaining seven months rather than being liable at the higher rate of 20 per cent. This reflects that the annual liability for betting tax is determined for the entire financial year and not for any separate part of the financial year.

It is noted that a similar approach was adopted in 2019 when the *Petroleum and Gas (Production and Safety) Act 2004* was amended to increase the petroleum royalty rate to 12.5 per cent of the wellhead value of petroleum from 1 July 2019, with a transitional petroleum royalty rate of 11. 25 per cent applying for the annual return period ending 31 December 2019.

On balance, it is considered the transitional taxing rate for betting tax is not considered to breach fundamental legislative principles.

Racing Act and Racing Regulation – legislation should make rights and liberties or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (Legislative Standards Act, section 4(3)(g)); legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons (Legislative Standards Act, section 4(3)(c)); legislation should be unambiguous and drafted in a sufficiently clear and precise way (Legislative Standards Act, section 4(3)(k))

Under section 4(2) of the Legislative Standards Act it is a fundamental legislative principle that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament.

Section 4(3) of the Legislative Standards Act provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations dependent on administrative power only if the power is sufficiently defined (section 4(3)(a)); and allows the delegation of administrative power only in appropriate cases and to appropriate persons (section 4(3)(c)).

The proposed amendments to the Racing Act allow for a Regulation to prescribe the portion of the hypothecated amount of betting tax revenue (paid to Racing Queensland under the Betting Tax Act) to be paid to fund country thoroughbred race meetings. The amendments also provide that Racing Queensland identify country thoroughbred race meetings through its racing calendar under section 84 of the Racing Act.

The amount prescribed in the Racing Regulation is $20 million, with a 2 per cent indexation each financial year. Prescribing the amount in a regulation allows the amount to be changed through a later regulation amendment process, rather than an Act of Parliament.

The purpose of prescribing the amount in a regulation is to ensure an appropriate level of flexibility in the future to adjust the amount available to country thoroughbred racing, e.g. to accommodate consideration of whether funding for country racing is reasonable in the context of betting tax revenue being received by Racing Queensland.

The prescription of the amount, with annual indexation, in a regulation still allows for appropriate scrutiny and transparency. Amendments to a regulation must be tabled in the Legislative Assembly under the *Statutory Instruments Act 1992* (Statutory Instruments Act) and may be subject to a disallowance motion.

Additionally, amendments to the Regulation are subject to scrutiny by the relevant Parliamentary portfolio committee. The committee can directly oppose an objectionable provision in subordinate legislation by asking the Legislative Assembly to support a motion to disallow the provision under the Statutory Instruments Act.

The determination of country thoroughbred race meetings by Racing Queensland via the racing calendar enables certainty in the identification of country race meetings annually. Racing Queensland is established through the Racing Act, and its functions and powers are subject to the Act. As the primary function of Racing Queensland is to manage codes of racing, including thoroughbred racing, it is the appropriate entity to determine what constitutes country racing.

In all codes of racing, this is done by Racing Queensland with reference to a racing calendar for the relevant code. As the definition of a country race may change over time (e.g. due to shifts in broadcast and wagering technology), it is necessary to have a degree of flexibility in relation to the definition.

Amendments in the Bill ensure that Racing Queensland must include country thoroughbred race meetings in the racing calendar, which is published and reported on under Racing Queensland's annual report. As part of its annual report, which is prepared under the *Financial Accountability Act 2009*, Racing Queensland will be required to include details of the country thoroughbred race meetings held during the financial year; and the amount applied under section 12 during the financial year to fund the country thoroughbred race meetings.

These requirements will ensure appropriate transparency of Racing Queensland's decisions in relation to country thoroughbred racing meetings.

Section 4(3)(k) of the Legislative Standards Act provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether it is unambiguous and drafted in a sufficiently clear and precise way. The minimum amount to be paid annually to fund country thoroughbred race meetings is prescribed in the Racing Regulation. Additionally, an indexation rate is applied, which will increase the amount each year by 2 per cent. This provides certainty to Racing Queensland and the broader community with regard to the increase, which will allow for more effective planning in relation to how money is distributed.

The prescription of an indexation rate means the amount will change annually from the $20 million initially prescribed. The fixed 2 per cent rate will allow this amount to be able to be calculated easily and consistently year on year. Racing Queensland will be required to publish the minimum amount as well as any additional amount it pays to country thoroughbred race meetings each year as part of its annual report. The Office of Racing will also keep a record of the minimum amount and can provide this information on request to members of the public.

Payroll Tax Act – determination by Commissioner of State Revenue of primary periodic threshold or additional periodic threshold – legislation should make rights and liberties or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (Legislative Standards Act, section 4(3)(a)) and should not adversely affect right and liberties, or impose obligations, retrospectively (Legislative Standards Act, section 4(3)(g))

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

Section 4(3) of the Legislative Standards Act provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, amongst other things, the legislation:

- makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a)); and
- does not adversely affect rights and liberties, or impose obligations, retrospectively (section 4(3)(g)).

Under provisions of the Payroll Tax Act which will commence on 1 January 2023, an employer is required to pay the mental health levy in a periodic return period on that portion of the employer's taxable wages that exceeds the primary periodic threshold for the period. The levy is payable at a higher rate on that portion of the employer's taxable wages that exceeds the additional periodic threshold for the period.

The Bill amends the Payroll Tax Act to allow the Commissioner to determine the amount of an employer's primary periodic threshold and/or additional periodic threshold for one or more periodic return periods (threshold determination). If a threshold determination does not apply for a particular periodic return period, the relevant threshold will be determined in accordance with a formula contained in the Payroll Tax Act. The Commissioner will be empowered to make or revoke a threshold determination in respect of a periodic return period for which an assessment of mental health levy has already been made.

An employer's levy liability in a particular periodic return period will therefore potentially be affected by the making of a threshold determination by the Commissioner, prospectively and/or retrospectively.

For a non-group employer, a threshold determination may have the effect of requiring the employer to pay more or less levy for a particular periodic return period than would have been payable had the threshold been calculated using the statutory formula. However, it will not change the employer's total levy liability for the financial year. This is because, under provisions of the Payroll Tax Act which will commence on 1 January 2023, any amount of the levy paid in respect of periodic return periods during the year will be deducted from that total levy liability and any net shortfall will be payable by, or any net overpayment will be refunded to, the employer.

An employer who is a member of a group but is not the DGE for the group (a non-DGE group member) will not have an annual levy liability against which levy paid in respect of periodic return periods will be reconciled. Under provisions of the Payroll Tax Act which will commence on 1 January 2023, only the DGE for the group has an annual levy liability, based on the total taxable wages paid by all members of the group (including the DGE) for the financial year. Amounts paid by the DGE and all non-DGE group members in relation to periodic return periods during the year are deducted from that annual liability, and the DGE is responsible for payment of a net shortfall, or entitled to a refund of a net overpayment. The making or revocation of a threshold determination by the Commissioner in relation to a non-DGE group member will therefore potentially impact both the non-DGE group member and the DGE, but will not change the total amount of levy payable by all members of the group for a financial year.

Although the making or revocation of a threshold determination by the Commissioner is not directly open to review, an assessment of levy which is made on the basis of a threshold determination or following the revocation of a threshold determination will be subject to the objection, review and appeal framework set out in Part 6 of the *Taxation Administration Act 2001* (Taxation Administration Act). Where an objection, review or appeal against an assessment is upheld, the employer's liability for the levy will be reassessed and any overpayment refunded, subject to the provisions of the Taxation Administration Act and the Payroll Tax Act.

It is therefore considered that these amendments have sufficient regard to the rights and liberties of individuals.

Payroll Tax Act – requirement by group members to provide information – sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(2)(a))

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

In relation to groups, the Bill contains amendments to the Payroll Tax Act which:

- require the provision of particular information by:
    - the DGE to non-DGE group members; and
    - non-DGE group members to the DGE; and
- authorise the provision of particular information by the Commissioner to the DGE;

to facilitate the calculation of the mental health levy and the lodgement of periodic, annual and final returns.

A failure by a DGE or non-DGE group member to provide information where required without reasonable excuse will be an offence with a maximum penalty of 100 penalty units.

In relation to the information to be provided by non-DGE group members to the DGE, the Payroll Tax Act already implicitly requires the provision of some of this information for payroll tax purposes. The additional information that is required for the purposes of the mental health levy (being estimates of the non-DGE group member's taxable wages and interstate wages, details of mental health levy paid by the non-DGE group member during a particular period, and the non-DGE group member's name and ABN) is necessary to:

- allow the DGE to determine its periodic levy liability, annual levy liability and final levy liability; and
- to facilitate the DGE providing information in relation to the group's total estimated taxable wages and interstate wages to each non-DGE group member to allow the non-DGE group member to determine its periodic levy liability.

The information to be provided by the DGE to non-DGE group members is limited to the group's total estimated taxable wages and interstate wages, which as noted is necessary to allow the non-DGE group members to determine their periodic levy liability. Importantly, a particular non-DGE group member will not need to receive specific information in relation to any other particular group member (including the identity of the other non-DGE group members).

In all cases, the information required to be provided by a non-DGE group member or the DGE is limited to information that is necessary to determine mental health levy liability and administer the framework.

In addition, a number of safeguards exist to mitigate the impact on individuals, including strict confidentiality provisions in the Taxation Administration Act which generally prohibit the disclosure of personal confidential information except in particular limited circumstances. The *Information Privacy Act 2009* and the Queensland Government information security policy also protect individuals' privacy.

Where a non-DGE group member or DGE fails to meet its obligations to provide information without reasonable excuse, they will be subject to an offence provision under the Payroll Tax Act to be created by the Bill, based on existing offence provisions in relation to payroll tax.

The existing offence provisions are well-established, having been in place for a number of years. They are considered to have sufficient regard to fundamental legislative principles.

Further, a failure to provide information as required for mental health levy purposes will only be an offence where the DGE or the non-DGE member does not have a reasonable excuse for such failure.

To the extent that the Commissioner discloses information to a DGE in relation to non-DGE group members, such disclosure will be necessary to support the determination of mental health levy liability for the DGE and non-DGE group members. In such a case, the DGE will be subject to provisions in the Taxation Administration Act which generally prohibit on-disclosure of that information except in specific limited circumstances. It is an offence to on-disclose information outside of these circumstances and a penalty may apply for non-compliance.

It is therefore considered that these amendments have sufficient regard to the rights and liberties of individuals.

Payroll Tax Act – imposition of penalty and offence for avoiding mental health levy – sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(2)(a))

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

The Bill amends the Payroll Tax Act to provide that:

- where an employer does not lodge a return, does not pay an amount of the employer's liability for the mental health levy and/or gives the Commissioner a return containing false or misleading information, the Commissioner may by written notice to the employer require the employer to pay a penalty of not more than the greater of 75 per cent of the employer's liability for the levy in relation to the return, or $100; and
- a person who avoids or attempts to avoid mental health levy commits an offence, with a maximum penalty of 20 penalty units and treble the amount of levy avoided or attempted to be avoided.

These amendments are required to provide appropriate sanctions for non-compliance with obligations in relation to the mental health levy, and are modelled on long-standing existing provisions in the Payroll Tax Act in relation to payroll tax. Those existing provisions are considered to have sufficient regard to fundamental legislative principles.

It is therefore considered that these amendments have sufficient regard to the rights and liberties of individuals.

Consultation

Amendment of the Betting Tax Act, Racing Act and Racing Regulation

Racing Queensland was consulted in the preparation of these amendments and supports the proposed amendments.

Amendment of the Payroll Tax Act

Community consultation was not undertaken in relation to the amendments to the Payroll Tax Act, as the amendments are of an administrative, machinery and/or transitional nature.

Consistency with legislation of other jurisdictions

The amendments are specific to the State of Queensland and are not otherwise uniform with or complementary to legislation of the Commonwealth or another state or territory.

In relation to the Racing Act and Racing Regulation amendments, Queensland is Australia's second largest, but most decentralised mainland state. The amendments provide for a particular funding model for Queensland country racing so directly comparing the proposed legislative model with another jurisdictions' legislation is not possible. However, the provision of funding for country, "picnic", or otherwise non-commercial racing by industry control bodies is not inconsistent with approaches in other Australian jurisdictions, as country racing programs, or their equivalent, are important to local communities throughout Australia.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Bill, when enacted, is the *Betting Tax and Other Legislation Amendment Act 2022*.

Clause 2 provides that:

- parts 2, 4 and 5 commence on 1 December 2022; and
- part 3 commences on 1 January 2023, immediately after the commencement of the *Revenue Legislation Amendment Act 2022*, part 8, division 3.

Part 2 Amendment of the *Betting Tax Act 2018*

Clause 3 provides that the part amends the *Betting Tax Act 2018* (Betting Tax Act).

Clause 4 amends section 24(3)(b) by replacing the reference to 'section 28(3)' with 'section 28(2)'. This amendment reflects the fact that section 28(2) will be omitted and the current section 28(3) will be renumbered as section 28(2).

Clause 5 amends section 28 by omitting subsection (2) and renumbering current subsection (3) as subsection (2). The effect of this amendment is that it removes the exclusion of any free component of a bet from the amount of a general bet. This means that the amount of a general bet will include any free component of the bet.

Clause 6 amends section 29 by replacing current subsection (2) with a new subsection (2) to clarify that the amount of a bet that is a free bet includes the monetary value of the free component of the bet.

The combined effect of the amendments made by clauses 4 to 6 is to incorporate free bets into the calculation of the 'total wagering revenue' of a betting operator under section 24(2). The amendments operate in conjunction with the existing definition of 'bet' in section 6(1), which includes a free bet, and the definition of 'free bet' in section 7.

Clause 7 inserts new part 6A, which provides for payments to Racing Queensland.

New section 59A provides a definition of 'betting tax revenue'.

New section 59B provides for payments to Racing Queensland each financial year, equal to 80 per cent of betting tax revenue for the financial year.

Clause 8 inserts a new part 8, division 1 heading. This creates a new division 1 in part 8 which incorporates current sections 66 to 68, which are transitional provisions relating to the original enactment of the Betting Tax Act.

Clause 9 amends section 66 by replacing 'part' with 'division' as a consequence of section 66 being incorporated into the new part 8, division 1.

Clause 10 inserts a new part 8, division 2 to provide for transitional provisions relating to this Bill.

New section 69 provides a definition of '2022-23 financial year'.

New section 70 provides for a taxing rate of 17.9 per cent to apply to the calculation of a betting operator's annual betting tax amount, for the purposes of calculating the annual liability for the 2022-23 financial year.

New section 71 sets out how the final liability of a betting operator is to be calculated in the 2022-23 financial year.

New section 72 sets out how payments of amounts to Racing Queensland are to be calculated for the 2022-23 financial year.

Clause 11 amends the Schedule 1 Dictionary as set out below.

A new definition of 'betting tax revenue' is inserted, which refers to the new section 59A.

A new definition of 'racing levy' is inserted, which means 5 per cent.

The current definition of 'taxing rate' is replaced with a new definition which incorporates the 5 per cent racing levy into the current 15 per cent taxing rate, effectively raising the taxing rate to 20 per cent.

Part 3 Amendment of the *Payroll Tax Act 1971*

Clause 12 provides that the part amends the *Payroll Tax Act 1971* (Payroll Tax Act).

Clause 13 replaces the existing note to section 5 to note the requirements for lodgement of a final return and the payment of payroll tax and the mental health levy upon the occurrence of a change of status.

Clause 14 amends subsection 8(1) to refer to the mental health levy as well as payroll tax. The effect of this amendment, and those in clauses 16 to 18, is that the same tests will be applied for determining whether particular wages are subject to payroll tax as for determining whether those wages are subject to the mental health levy.

Clause 15 amends subsection 8A(1) to refer to the mental health levy as well as payroll tax.

Clause 16 amends section 9 to refer to the mental health levy as well as payroll tax.

Clause 17 amends section 9C to refer to the mental health levy as well as payroll tax.

Clause 18 amends section 12A (as inserted by the Revenue Legislation Amendment Act from 1 January 2023) to insert a new subsection 12A(3). New subsection 12A(3) provides that subsection 12A(2) (which provides the purposes for which amounts attributable to the mental health levy may be used) applies only to the levy itself, and not to amounts associated with the levy such as unpaid tax interest and penalty tax.

Clause 19 amends subsection 13(1) to clarify that the reference to taxable wages paid or payable in kind is a reference to wages paid or payable by an employer, and subsection 13(5) to refer to the mental health levy as well as payroll tax.

Clause 20 amends section 13F so that the same consequences apply for the mental health levy in relation to wages paid by a relevant contract employer as apply for payroll tax. This is achieved by amending section 13F to:

- refer to the mental health levy as well as payroll tax in the heading;
- renumber existing subsection 13F(2) to 13F(4);
- insert new subsections 13F(2) and 13F(3) to provide that, subject to part 2, divisions 5B and 5C (as inserted by the Revenue Legislation Amendment Act from 1 January 2023), if a relevant contract employer pays the mental health levy on wages comprising a payment in relation to the performance of work, no other person is liable for the mental health levy on those wages or on wages comprising a payment in relation to that work; and
- have the renumbered subsection 13F(4) refer to new subsection 13F(2)(b) and the mental health levy.

Clause 21 amends subsection 13J(2)(a) (which provides that an amount, benefit or payment that is exempt from payroll tax under certain provisions of division 2 will not be taken to be wages paid or payable by an employment agent under an employment agency contract) to refer to the mental health levy as well as payroll tax.

Clause 22 amends section 13K (which relates to payroll tax paid by an employment agent) to refer to the mental health levy as well as payroll tax, and to provide that section 13K applies subject to part 2, divisions 5B and 5C (as inserted by the Revenue Legislation Amendment Act from 1 January 2023).

Clause 23 amends section 13L (which allows the Commissioner to take certain actions where the effect of an employment agency contract is to reduce or avoid payroll tax liability) to:

- refer to the mental health levy as well as payroll tax;
- insert new subsection 13L(1A) to provide that a reference to an employment agency contract in subsection 13L(1) includes, for a contract to which a non-DGE group member of a group is a party, a reference to the DGE for the group; and
- renumber new subsection 13L(1A), and existing subsections 13L(2) and (3), as subsections 13L(2) to (4).

Clause 24 amends section 13LA (which relates to payroll tax avoidance arrangements in relation to an employment agency) to refer to the mental health levy as well as payroll tax. This includes amending the terms ‘assumed non-adjusted tax’ and ‘assumed adjusted tax’ to ‘assumed non-adjusted tax and levy’ and ‘assumed adjusted tax and levy’ respectively, and amending the definitions of those terms in subsection 13LA(4) to include the mental health levy.

Clause 25 amends subsection 13S(1)(c) (which relates to the granting of a share or option by a grantor) to refer to the mental health levy as well as payroll tax.

Clause 26 amends section 13T (which sets out the payroll tax consequences of the rescission or cancellation of a share or an option) to:

- refer to the mental health levy as well as payroll tax;
- insert new subsection 13T(3A) to provide that, if the grantor is a non-DGE group member, subsection 13T(3) applies as if it referred to the DGE's annual levy liability or final levy liability; and
- renumber new subsection 13T(3A), and existing subsections 13T(4) and (5), as subsections 13T(4) to (6).

Clause 27 amends section 14 to refer to the mental health levy as well as payroll tax. The effect of this amendment is that wages that are not liable to payroll tax are also not liable to the mental health levy.

Clause 28 amends section 14A to refer to the mental health levy as well as payroll tax, so that wages paid or payable to an employee for parental leave, adoption leave, surrogacy leave or cultural parent leave are not liable to the mental health levy.

Clause 29 amends section 15 to provide that certain wages paid or payable by the Queensland Country Women's Association (CWA) are not liable to the mental health levy.

The clause inserts new subsection 15(2A), which provides that, for the purposes of part 2, divisions 5B and 5C (as inserted by the Revenue Legislation Amendment Act from 1 January 2023), CWA's periodic levy liability, annual levy liability and final levy liability are nil. That subsection, and existing subsections 15(3) to (8), are then renumbered to subsections 15(3) to (9).

Subsection 15(4) (as renumbered) provides that subsection 15(3) (as renumbered) does not apply in the same circumstances as the current exemption from payroll tax for CWA does not apply, being if wages are paid or payable by CWA in carrying on a business activity predominantly on a commercial basis (commercial wages) or if CWA is a member of a group.

Subsection 15(5) (as renumbered) provides that if commercial wages are paid or payable by CWA but CWA is not a member of a group, then:

- payroll tax payable is the amount bearing the same proportion to the payroll tax payable on CWA's taxable wages as CWA's commercial wages bear to the taxable wages before deducting the prescribed amount; and
- for the purposes of calculating CWA's periodic levy liability, annual levy liability and final levy liability, CWA's taxable wages are taken to include only the commercial wages.

Subsection 15(6) (as renumbered) provides that if CWA is a member of a group, then:

- the annual amount of payroll tax payable by the members of the group must be reduced by an amount bearing the same proportion to the payroll tax payable as CWA's taxable wages (other than the commercial wages) bear to the taxable wages paid or payable by the members of the group; and

- CWA's taxable wages are taken to include only the commercial wages for the purposes of determining CWA's periodic levy liability, and the DGE's annual levy liability or final levy liability.

Clause 30 amends section 15A to refer to the mental health levy as well as payroll tax, so that wages paid or payable by an employer for an employee for services performed or rendered entirely in another country for a continuous period of more than six months after wages were first paid for the employee for the services are not liable to the mental health levy.

Clause 31 amends subsection 19(1)(b) to clarify that the relevant condition for a significant wage change to happen for an employer other than the DGE for a group is that the previous estimated wages actually differ by more than 30% from the current estimated wages.

Clause 32 amends subsection 25(1) to clarify that the relevant condition for a significant wage change to happen for the DGE for a group is that the previous estimated wages actually differ by more than 30% from the current estimated wages.

Clause 33 amends subsection 29(3) to refer to a person having lodged, or having been required to lodge, one or more final returns under subsection 64(2) (rather than under section 64 generally) during the year. This is because subsection 64(5) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023) contemplates the lodgement of a final return by the DGE for a group, stating the DGE's final levy liability or final levy refund amount.

Clause 34 amends subsection 30(2) to refer to an employer having lodged, or having been required to lodge, one or more final returns under subsection 64(2) rather than under section 64 generally (which would also include a final return lodged by a DGE under section 64(5) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023)) during the financial year.

Clause 35 amends subsection 35A(3) to refer to an employer or DGE having lodged, or having been required to lodge, one or more final returns under subsection 64(2) rather than under section 64 generally (which would also include a final return lodged by a DGE under section 64(5) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023)) during the eligible year.

Clause 36 amends subsection 36(a) to refer to an employer having lodged, or having been required to lodge, a final return under subsection 64(2) rather than under section 64 generally (which would also include a final return lodged by the DGE under section 64(5) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023)) for a final period.

Clause 37 omits section 43E (as inserted by the Revenue Legislation Amendment Act from 1 January 2023) which defined 'primary periodic threshold' and 'additional periodic threshold'. The clause inserts a new section 43E, and supporting definitions in new sections 43EA, 43EB and 43EC, to provide how the primary periodic threshold and additional periodic threshold (collectively, the periodic thresholds) are determined.

New section 43E provides that the Commissioner may, by written notice given to an employer, determine the amount of the employer's primary periodic threshold or additional periodic threshold for a periodic return period (other than the last periodic return period of a financial year). If such a notice is given, the relevant periodic threshold will be the amount stated in that

notice. If no such notice has been given, the relevant periodic threshold is the amount worked out on the most recent calculation day (as defined in new section 43EB) using the formula in new subsection 43E(3)(b) (for the primary periodic threshold) or (4)(b) (for the additional periodic threshold). Those formulae are the same as those in subsections 43E(1) and (2) as inserted by the Revenue Legislation Amendment Act from 1 January 2023 – that is, where the Commissioner has not made a determination of a periodic threshold for a particular periodic return period, the only practical change made by new section 43E is to clarify the time at which the relevant formula is to be applied (i.e. the calculation day).

The ability for the Commissioner to determine periodic thresholds is akin to the Commissioner's existing power to determine an employer's fixed periodic deduction for payroll tax purposes. As with that power, the Commissioner's determination of periodic thresholds may apply for multiple periodic return periods, and may be revoked by the Commissioner.

New section 43EA defines 'current financial year' as being, for a periodic return period, the financial year in which the periodic return period occurs. This term is used in the new sections 43E and 43EB.

New section 43EB defines 'calculation day' for the purposes of working out an employer's primary periodic threshold or additional periodic threshold for a return period under section 43E if the Commissioner has not made a determination of the relevant periodic threshold for that period. The requirement in subsections 43E(3)(b) and (4)(b) to work out a periodic threshold on a particular calculation day means that the adjusted primary threshold and adjusted additional threshold (which are inputs into the formulae in those subsections) are to be determined based on the employer's estimates of the taxable wages and interstate wages payable by the employer, or all members of the group (if the employer is a group member), for the financial year as at that calculation day.

New section 43EC(1) provides that, for the purposes of the mental health levy, a significant wage change happens during a periodic return period for an employer or group if the previous estimated wages for the period differ by more than 30% from the current estimated wages for the period. This concept is relevant for the definition of 'calculation day' in new subsection 43EB(2), as well as for the notification requirements of the DGE and group members under new section 88E. 'Previous estimated wages' and 'current estimated wages' are defined in new subsection 43EC, and refer to estimates of the wages paid or payable by an employer (if the employer is not a group member) or a group (if the employer is a group member) for the current financial year, with such estimates being made at a particular date. In particular, the definition of 'current estimated wages' will necessitate updated estimates of the wages for the financial year being made at the end of each periodic return period.

Clause 38 inserts new subsection 43F(4) and notes to section 43F. Section 43F is inserted by the Revenue Legislation Amendment Act from 1 January 2023, and provides for the amount of the periodic levy liability for a periodic return period.

New subsection 43F(4) provides that there is no periodic levy liability for the last periodic return period of a financial year. This is to reflect that section 59(1A) provides that no return is required to be lodged for that period. The wages paid or payable by an employer during the last periodic return period will be included when determining the annual levy liability of the

employer (if the employer is not a group member) or the DGE (if the employer is a group member).

The new notes to section 43F reflect that section 30(1)(a) of the *Taxation Administration Act 2001* (Taxation Administration Act) means that an employer's periodic levy liability for a periodic return period must be paid on the date the employer is required to lodge a periodic return for the period, and that the Taxation Administration Act may require the employer to include assessed interest or penalty tax in an assessment of periodic levy liability.

Clause 39 amends section 43I (as inserted by the Revenue Legislation Amendment Act from 1 January 2023) to replace a component of the formulae in the definitions of 'additional annual levy amount' and 'primary annual levy amount' as they apply to the DGE for a group, and to add a supporting definition of 'relevant group employer'. This is to ensure consistency between how the calculation of the DGE's annual levy amount for a financial year is to reflect the number of days during the year that one or more group members paid, or were liable to pay, taxable wages or interstate wages, and the way that section 43M (as inserted by the Revenue Legislation Amendment Act from 1 January 2023) provides that the DGE's final levy amount for a final period is to reflect the number of days in the final period that one or more group members paid, or were liable to pay, taxable wages or interstate wages.

Clause 40 amends section 43J (as inserted by the Revenue Legislation Amendment Act from 1 January 2023) to omit subsections 43J(2) and (3), and insert new subsections 43J(2) to (7). The new subsections reflect the principle that, in calculating the annual levy liability of an employer (if the employer is not a group member) or a DGE, taxable wages and interstate wages that have previously been reflected in a final return lodged or required to be lodged during the financial year are to be excluded – irrespective of who lodged (or was required to lodge) the final return and who paid the wages.

New subsection 43J(3) provides that new subsection 43J(4) applies where, in respect of an employer who is not a group member on 30 June of the financial year, a final return was lodged or required to be lodged by a person (either the employer or some other person) during the financial year which reflected wages paid or payable by the employer.

New subsection 43J(4) provides that, in working out the employer's annual levy liability for the financial year:

- the wages previously reflected (or required to be reflected) in a final return (final levy return wages) are not included in the wages paid or payable for the financial year;
- the part of the periodic levy liability amount attributable to the final levy return wages is not included in the employer's combined periodic liability for the financial year; and
- the employer is taken not to have paid, or been liable to pay, wages for the days in the final period on which the employer paid, or was liable to pay, the final levy return wages.

Example

On 30 April 2024, Employer A ceased to be a member of ABC Group (having been a member of the group from 1 July 2023), and starts paying wages other than as a group member on 1 May 2024.

Following such cessation, the DGE for ABC Group lodged a final return which included the wages paid or payable by all group members (including Employer A) during the period 1 July 2023 to 30 April 2024 (final period). The DGE's final levy liability for the final period was calculated with reference to such wages, and the periodic levy liability amount paid by each group member (including Employer A) during the final period.

When Employer A calculates its annual liability for the financial year ending 30 June 2024, that calculation will only reflect:

- *wages paid or payable by Employer A during the period 1 May 2024 to 30 June 2024;*
- *the periodic levy liability attributable to wages paid or payable during the period 1 May 2024 to 30 June 2024 (although there will be no periodic levy liability for the periodic return period ending 30 June 2024); and*
- *Employer A having paid, or being liable to pay, wages for 61 days in the financial year ending 30 June 2024 (i.e. 1 May 2024 to 30 June 2024).*

New subsection 43J(5) provides that new subsection 43J(6) applies where, in respect of an employer who is the DGE for a group on 30 June of the financial year, a final return was lodged or required to be lodged by a person (either the employer or some other person) during the financial year which reflected wages paid or payable by a person (either the employer or some other person). This covers situations including:

- an employer (the entering employer) becoming a group member of the DGE's group during the year (because the entering employer would have lodged (or was required to lodge) a final return which included, and calculated its final levy liability or final levy refund amount with reference to, the wages paid or payable by the entering employer during the final period); and
- an employer (the leaving employer) ceasing to be a group member of the DGE's group during the year (because the DGE would have lodged (or was required to lodge) a final return which included, and calculated its final levy liability or final levy refund amount with reference to, the wages paid or payable by all group members (including the leaving employer) during the final period).

New subsection 43J(6) provides that, in working out the DGE's annual levy liability for the financial year:

- the final levy return wages are not included in the wages paid or payable by the group members for the financial year;
- the part of the periodic levy liability amount attributable to the final levy return wages is not included in the DGE's combined periodic liability for the financial year; and
- an employer who paid, or was liable to pay, the final levy return wages is taken not to have paid, or been liable to pay, wages as a member of the group for the days in the final period on which the employer paid, or was liable to pay, the final levy return wages.

Example

Following on from the example for new subsection 43J(4), when the DGE for ABC Group calculates its annual liability for the financial year ending 30 June 2024, that calculation will only reflect:

- *wages paid or payable by the group members during the period 1 May 2024 to 30 June 2024 (as wages paid or payable by group member during the period 1 July 2023 to 31*

April 2024 were included in the final return lodged following Employer A's exit from the group);

- *the periodic levy liability attributable to wages paid or payable by the group members during the period 1 May 2024 to 30 June 2024 (although there will be no periodic levy liability for the periodic return period ending 30 June 2024); and*
- *one or more relevant group employers paying, or being liable to pay, wages for 61 days in the financial year ending 30 June 2024 (i.e. 1 May 2024 to 30 June 2024).*

New subsection 43J(7) provides that new subsections (2) to (6) do not apply in relation to a final period during a financial year in certain circumstances (being the circumstances set out in subsection 43J(3) as inserted by the Revenue Legislation Amendment Act from 1 January 2023).

The notes to section 43J are also amended to remove references to annual liability, as that concept is not relevant for the mental health levy.

Clause 41 amends section 46 to refer to a DGE for a group making a nomination in a final return lodged under section 64(2) rather than under section 64 generally (which would also include a final return lodged by the DGE under section 64(5) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023)).

Clause 42 amends section 49C to refer to a DGE for a group making a nomination in a final return lodged under section 64(2) rather than under section 64 generally (which would also include a final return lodged by the DGE under section 64(5) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023)).

Clause 43 amends section 50 (which allows the Commissioner to take certain actions in relation to an agreement, transaction or arrangement which has the effect of reducing or avoiding payroll tax liability) to refer to the mental health levy as well as payroll tax.

Clause 44 amends subsection 63(4)(a) to refer to an employer having lodged, or having been required to lodge, a final return under subsection 64(2) rather than under section 64 generally (which would also include a final return lodged by the DGE under section 64(5) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023)).

Clause 45 amends subsections 64(5) and (6) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023) to provide that the return to be lodged by the DGE under subsection 64(5) when a change of status occurs to a member of the group must be lodged within 21 days after the end of the periodic return period in which the last day of the final period occurs. Where the change of status occurs to the DGE, this will mean that the DGE will have different due dates for the returns to be lodged under subsection 64(2) (in relation to payroll tax) and subsection 64(5) (in relation to the levy).

A note is also added to subsection 64(5), indicating that a failure to lodge a final return is an offence under section 121 of the Taxation Administration Act.

Clause 46 amends the note to subsection 70(4) to refer to the mental health levy as well as payroll tax, as exclusion of persons from a group under section 74 will apply for payroll tax and mental health levy purposes.

Clause 47 amends the note to subsection 71(1) to refer to the mental health levy as well as payroll tax, as exclusion of persons from a group under section 74 will apply for payroll tax and mental health levy purposes.

Clause 48 amends the note to subsection 72(1) to refer to the mental health levy as well as payroll tax, as exclusion of persons from a group under section 74 will apply for payroll tax and mental health levy purposes.

Clause 49 amends the note to subsection 73(2) to refer to the mental health levy as well as payroll tax, as exclusion of persons from a group under section 74 will apply for payroll tax and mental health levy purposes.

Clause 50 inserts a new section 77A, which applies where the Commissioner makes or revokes a determination of a periodic threshold under new subsection 43E(1) which would change the amount of the employer's periodic levy liability for a periodic return period for which an assessment of the periodic levy liability has already been made. This section is based on section 77, which applies in similar circumstances in relation to payroll tax.

Where new section 77A applies, a reassessment must be made of the employer's periodic levy liability for the relevant periodic return period to give effect to the making or revocation of the determination. Where that reassessment would change the annual levy liability for a financial year, or the final levy liability for a final period, of the employer (if the employer is not a group member) or the DGE (if the employer is a group member), a reassessment of that annual levy liability or final levy liability must also be made.

Clause 51 effectively amends subsection 78(1)(b) to refer to an employer having lodged, or having been required to lodge, a final return under subsection 64(2) rather than under section 64 generally (which would also include a final return lodged by the DGE under section 64(5) (as inserted by the Revenue Legislation Amendment Act from 1 January 2023)).

Clause 52 inserts a new section 78A, which applies in certain circumstances to an employer who is not a member of a group on 30 June in a financial year and who has lodged (or was required to lodge) a final return under subsection 64(2) for a final period in a financial year. This section is based on section 78, which applies in similar circumstances in relation to payroll tax.

Where new section 78A applies, a reassessment must be made of the employer's annual levy liability to include the final return wages and final levy liability for working out the liability, despite new subsection 43J(4) providing that those amounts are not to be included.

Clause 53 amends the heading to section 79 to refer to a reassessment of payroll tax, as the section relates only to payroll tax.

Clause 54 inserts a new section 79A, which applies for an employer who is a group member if the DGE for the group changes and the change would change the amount of the employer's periodic levy liability for a periodic return period for which an assessment of the employer's periodic levy liability has been made. This section is based on section 79, which applies in similar circumstances in relation to payroll tax.

Where new section 79A applies, a reassessment must be made of the employer's periodic levy liability for the relevant periodic return period to give effect to the change of DGE. Where that reassessment would change the annual levy liability for a financial year, or the final levy liability for a final period, of certain persons, a reassessment of that annual levy liability or final levy liability must also be made.

Clause 55 amends the heading to section 80 to refer to a reassessment of payroll tax, as the section relates only to payroll tax.

Clause 56 inserts a new section 80A, which applies where the making or revocation by the Commissioner of an order under section 74 excluding a person from a group would change the amount of a person's periodic levy liability for a periodic return period for which an assessment of the person's periodic levy liability has been made. This section is based on section 80, which applies in similar circumstances in relation to payroll tax.

Where new section 80A applies, a reassessment must be made of the person's periodic levy liability for the relevant periodic return period to give effect to the making or revocation of the order. Where that reassessment would change the annual levy liability for a financial year, or the final levy liability for a final period, of certain persons, a reassessment of that annual levy liability or final levy liability must also be made.

Clause 57 amends the heading to section 81 to refer to assessments of payroll tax, as the section relates only to payroll tax.

Clause 58 inserts a new section 81A, which applies in relation to assessments by the Commissioner of annual levy liability or final levy liability if an employer lodged, or was required under section 59 to lodge, a periodic return during all or part of a financial year or final period. This section is based on section 81, which applies in similar circumstances in relation to payroll tax.

Where new section 81A applies:

- the Commissioner can make assessments on the basis that the employer was exempt from lodging periodic returns during the financial year or final period (such that the Commissioner does not need to reassess the periodic levy liability for the relevant periodic return periods);
- any amounts paid or payable by the employer for a periodic return period can be applied as payment for particular specified levy liabilities; and
- the Commissioner is not prevented from making a subsequent reassessment under new s.82A of periodic levy liability, annual levy liability or final levy liability.

Clause 59 amends the heading to section 82 to refer to assessments of payroll tax, as the section relates only to payroll tax.

Clause 60 inserts a new section 82A, which applies if an employer was exempt under section 62 from lodging a periodic return during all or part of a financial year, or the Commissioner authorised the employer under section 60 to lodge periodic returns other than on a monthly basis during all or part of a financial year. This section is based on section 82, which applies in similar circumstances in relation to payroll tax.

Where new section 82A applies, the Commissioner may in certain circumstances treat the employer as if the employer had been required under section 59 to lodge a periodic return for each month during all or part of the period for which the employer had not been lodging on a monthly basis, for the purposes of making an assessment or reassessment of periodic levy liability, annual levy liability or final levy liability. Where such an assessment or reassessment is made, the employer must be treated as if the employer had been required under section 59 to lodge a periodic return for each month during all or part of the relevant period, and the Commissioner can make a subsequent reassessment of annual levy liability or final levy liability.

Clause 61 amends section 83(2)(b), which allows the Commissioner to apply a refund of amounts in relation to payroll tax and the mental health levy to certain specified liabilities, to allow such refund to also be applied to a prescribed levy liability (as defined in the Schedule, as amended by clause 69).

Clause 62 amends section 84, which allows the Commissioner to apply all or part of a refund to which a group member is entitled under section 37 of the Taxation Administration Act in relation to payroll tax to certain specified payroll tax-related liabilities of another member of the group, to apply to refunds in relation to the mental health levy and to prescribed levy liabilities of another member of the group.

Clause 63 inserts new sections 88A to 88E in relation to the provision of information by non-DGE group members, the DGE and the Commissioner, to facilitate the calculation of the mental health levy and the lodgement of periodic, annual and final returns.

New section 88A provides for particular information to be given in relation to a financial year (the relevant financial year) or the year immediately following the relevant financial year (the following financial year), as follows:

- On or before 7 July in the relevant financial year, an employer who was a non-DGE group member on 1 July of the relevant financial year must give particular information to the DGE for the group in relation to the relevant financial year (including an estimate of the total amount of the taxable wages, and of the interstate wages, that will be payable by the employer as a member of the group during the relevant financial year). This is to facilitate the DGE determining the total amount of the taxable wages and the total amount of the interstate wages estimated to be payable by all members of the group for the relevant financial year (the relevant financial year estimates).
- On or before 28 July in the relevant financial year, the DGE must give the relevant financial year estimates to each employer who was a non-DGE group member on 1 July in the relevant financial year (with such estimates being determined from the information provided by non-DGE group members as contemplated above). This is to facilitate the non-DGE group members determining their initial adjusted primary threshold and adjusted additional threshold for the relevant financial year.
- On or before 7 July in the following financial year, an employer who was a non-DGE group member at any time during the relevant financial year must give particular information to the DGE for the group in relation to the relevant financial year (including the details of the total amount of the taxable wages, and of the interstate wages, that were paid or payable by the employer as a member of the group during the relevant financial year). This is to facilitate the DGE determining its annual levy liability for the relevant financial year.

For example, for an employer who was a non-DGE group member on both 30 June 2024 and 1 July 2024, two sets of information (i.e. actual data in relation to the 2023-24 financial year, and estimates data in relation to the 2024-25 financial year) will be required to be provided to the DGE on or before 7 July 2024.

Failure by a non-DGE group member or the DGE to provide information as required, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units.

New section 88B provides for particular information to be given to the DGE if a change of status happens for an employer (the affected employer) who is a non-DGE group member, to facilitate the DGE calculating its final levy liability in relation to the change of status.

Within seven days after the end of the periodic return period in which the last day of the final period occurs (the final periodic return period), the affected employer must give the DGE for the group the total amount of the taxable wages, and of the interstate wages, paid or payable by the affected employer, and the affected employer's periodic levy liability, as a member of the group during the final period).

On or before seven days after the later of the last day of the final periodic return period, and the day on which the DGE asks the employer for information, an employer who is a non-DGE group member (other than the affected employer) must give the DGE the total amount of the taxable wages, and of the interstate wages, paid or payable by the employer, and the employer's periodic levy liability, as a member of the group during the final period. For these purposes, where only part of a particular periodic return period is in the final period, an employer's periodic levy liability for that periodic return period is pro-rated to only take into account the days in the final period.

Failure by the affected employer or another non-DGE group member to provide information as required, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units.

New section 88C provides for particular information to be given if a change of status happens for the DGE, to facilitate the DGE calculating its final levy liability in relation to the change of status.

On or before seven days after the later of the last day of the final periodic return period, and the day on which the DGE asks the employer for information, an employer who is a non-DGE group member must give the DGE the total amount of the taxable wages, and of the interstate wages, paid or payable by the employer, and the employer's periodic levy liability, as a member of the group during the final period. For these purposes, where only part of a particular periodic return period is in the final period, an employer's periodic levy liability for that periodic return period is pro-rated to only take into account the days in the final period.

Failure by a non-DGE group member to provide information as required, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units.

New section 88D provides for particular information to be given if an employer becomes a group member but does not become the DGE for the group at the same time, to facilitate the DGE providing information to non-DGE group members as required under new section 88E.

Within seven days after the employer becomes a group member, the employer must give the DGE an estimate of the total amount of the taxable wages, and of the interstate wages, that will be payable by the employer as a member of the group until the end of the financial year in which the employer becomes a group member.

Failure by an employer to provide information as required, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units.

New section 88E requires the DGE to provide information to each non-DGE group member if:

- the DGE becomes aware that a significant wage change has happened during a periodic return period for the group;
- the DGE receives information from an employer under new section 88D;
- an employer joins a group and becomes the DGE for the group at the same time;
- the DGE becomes aware that a group member has started paying, or becomes liable to pay, taxable wages other than as a member of the group; or
- the DGE starts paying, or becomes liable to pay, taxable wages other than as a member of the group.

Within seven days after the occurrence of such an event, the DGE must give each non-DGE group member an estimate of the total amount of the taxable wages, and of the interstate wages, that will be payable by all group members for the financial year in which the event occurs. In doing so, the DGE may rely on the latest information held by the DGE at the time the requirement arises (e.g. the information provided by a non-DGE group member as required by new section 88A).

Failure by the DGE to provide information as required, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units.

The last day of the periodic return period in which a non-DGE group member receives such information from the DGE will be a calculation day for the non-DGE group member under new subsection 43EB(2)(g), for working out the member's primary periodic threshold or additional periodic threshold for a periodic return period under section 43E (if a Commissioner has not made a determination of the relevant threshold).

Clause 64 inserts new section 89A, which allows the Commissioner to give a DGE for a group any information relating to the group that was received from a previous DGE for the group in relation to the mental health levy. Although it is anticipated that an incoming DGE would receive relevant information directly from an outgoing DGE, this allows the Commissioner to provide relevant information to the incoming DGE to support ongoing administration of the levy.

Clause 65 amends section 90 (which allows the Commissioner to require an employer to pay a penalty where the employer engages in particular conduct in relation to the employer's payroll tax obligations) to refer to the mental health levy as well as payroll tax.

As amended, section 90 applies if an employer:

- does not lodge a periodic return, annual return or final return as required;
- does not pay an amount of the employer's liability for payroll tax or the mental health levy in relation a return; or

- gives the Commissioner a return containing false or misleading information in contravention of section 122 or 123 of the Taxation Administration Act.

Where section 90 applies, the Commissioner may, by written notice given to the employer, require the employer to pay a penalty of an amount that is not more than the greater of 75% of the relevant liability amount, or $100. Section 90(6) is amended to include a definition of 'relevant liability amount', which refers to the employer's liability for payroll tax and/or mental health levy in relation to the return depending on the particular circumstances. For example:

- as a periodic return covers both payroll tax and the mental health levy, the relevant liability amount for a failure to lodge a periodic return as required is the total amount of the employer's liability for payroll tax and the mental health levy in relation to the return; and
- if an employer lodges a return which contains false or misleading information in relation to the mental health levy but not payroll tax (e.g. the employer's annual return contains false information as to the amount of the combined periodic liability for the financial year), the relevant liability amount is the total amount of the employer's liability for the mental health levy in relation to the return.

Clause 66 amends section 92 (which provides how the Payroll Tax Act applies to an employer who pays, or is liable to pay, wages as trustee of a trust) to refer to the mental health levy as well as payroll tax.

Clause 67 amends section 93 (which provides that a person who avoids or attempts to avoid payroll tax is guilty of an offence, with a maximum penalty of 20 penalty units and treble the amount of payroll tax avoided or attempted to be avoided) to refer to the mental health levy as well as payroll tax.

As amended, section 93 provides that an offence will be committed by any person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid payroll tax or the mental health levy. The maximum penalty for the offence is 20 penalty units, plus treble the amount of payroll tax avoided or attempted to be avoided and treble the amount of mental health levy avoided or attempted to be avoided. Where particular conduct avoids, or attempts to avoid, both payroll tax and the mental health levy, only a single offence is committed.

Clause 68 inserts new part 16, containing transitional provisions.

New section 149 confirms that the mental health levy is not imposed on taxable wages paid or payable before 1 January 2023, and makes a number of modifications to various provisions to reflect the commencement of the mental health levy framework halfway through the 2022-23 financial year. For example:

- references in new part 2, divisions 5A, 5B and 5C to a financial year are, for the 2022-23 financial year, taken to be references for the period from 1 January 2023 to 30 June 2023; and
- references in various formulae to $10 million and $100 million are taken to be references to $5 million and $50 million respectively.

New section 150 provides for particular information to be given during January 2023 by group members, as follows:

- On or before 9 January 2023, an employer who is a non-DGE group member on 1 January 2023 must give the DGE:
    - the employer's name and ABN; and
    - an estimate of the total amount of the taxable wages, and of the interstate wages, that will be payable by the employer as a member of the group during the period 1 January 2023 to 30 June 2023.

  This is to facilitate the DGE complying with its obligations under new subsection 150(2). Failure to provide information as required, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units.
- On or before 30 January 2023, an employer who is the DGE for a group on 9 January 2023 must give each employer who was a non-DGE group member on 1 January 2023 details of the total amount of the taxable wages and the total amount of the interstate wages payable by all members of the group during the period 1 January 2023 to 30 June 2023 (with the DGE being permitted to determine those totals based on the information provided by the non-DGE group members). This is to facilitate the non-DGE group members determining their initial adjusted primary threshold and adjusted additional threshold for that period. Failure by the DGE to provide information as required, without reasonable excuse, will be an offence with a maximum penalty of 100 penalty units.

New section 151 provides for the modified application of new section 88A in relation to the 2022-23 financial year.

Clause 69 amends the dictionary in the Schedule to:

- insert new definitions of 'current financial year' and 'prescribed levy liability';
- modify the definitions of 'calculation day' and 'significant wage change' to refer to new provisions;
- modify paragraph (b) of the definition of 'designated period' to refer to section 64(2) rather than section 64 generally; and
- modify the definition of 'taxable wages' to refer to the mental health levy as well as payroll tax.

Part 4 Amendment of the *Racing Act 2002*

Clause 70 provides that the part amends the *Racing Act 2002* (Racing Act).

Clause 71 omits existing section 12 which provided for the discontinued funding model, where the Racing Queensland Board (Racing Queensland) was required to pay a percentage of its net UBET product fee for each year as prize money for non-UBET thoroughbred races conducted during that year by non-UBET thoroughbred clubs. The clause inserts new section 12 which requires Racing Queensland to use a minimum amount of the instalments paid to Racing Queensland under section 59B of the Betting Tax Act, to fund country thoroughbred race meetings. The new provision enables a regulation to prescribe the minimum amount as well as increase the amount by a prescribed percentage.

Clause 72 omits subsection 44(4) as the relevant provisions are provided for in the new section 44A inserted in clause 73.

Clause 73 inserts new section 44A which provides for matters Racing Queensland must include in its annual report prepared under the *Financial Accountability Act 2009*, section 63. The new section requires the annual report include details of the country thoroughbred race meetings held during the financial year; and the amount applied under section 12 during the financial year to fund the country thoroughbred race meetings.

Clause 74 amends section 84 to require Racing Queensland include in the racing calendar prepared in relation to thoroughbred racing under this section, details of the country thoroughbred race meetings to be held during a calendar period.

Clause 75 provides for a new Chapter 10 which includes the transitional provisions in relation to the Racing Act as part of the Bill. These are:

- Section 227 provides for definitions for the chapter.
- Section 228 provides that references to financial years in both section 12 of the Racing Act and section 59B of the Betting Tax Act are references to the period left in the current financial year (as the legislation is intended to commence midway through the financial year).
- Section 229 ensures that money paid in the current financial year to country thoroughbred race meetings in accordance with the omitted section 12 will contribute to the minimum amount prescribed in the new section 12 for remaining period of the financial period. This ensures that Racing Queensland will only be required to pay $20 million to country racing for the 2022-2023 financial year.
- Section 230 provides that the new requirements with regard to annual reporting by Racing Queensland will only apply, in the current financial year, for the period after the legislation commences.

Part 5 Amendment of the *Racing Regulation 2013*

Clause 76 provides that the part amends the *Racing Regulation 2013* (Racing Regulation).

Clause 77 inserts new Part 1AA in the Racing Regulation which includes:

- Section 2AA which prescribes the minimum amount Racing Queensland is required provide to fund country thoroughbred race meetings annually, including provision for the amount to increase annually by a prescribed percentage.
- Section 2AB provides for the prescribed percentage for the annual increase of the amount under section 2AA. The prescribed percentage is 2 per cent.