

Betting Tax and Other Legislation Amendment Bill 2022

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Cameron Dick, Treasurer and Minister for Trade and Investment make this statement of compatibility with respect to the Betting Tax and Other Legislation Amendment Bill 2022 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends 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 allocation of 80 per cent of annual betting tax revenue to the Racing Queensland Board (RQ).

The Bill also amends the *Racing Act 2002* (Racing Act) and *Racing Regulation 2013* (Racing Regulation) from 1 December 2022 to:

- provide a head of power in the Racing Act to hypothecate country thoroughbred racing funding, allow for indexation, and allow for details of the minimum dollar amount (\$20 million) and indexation (2 per cent per annum) to be prescribed in the Racing Regulation;
- require RQ to publish a specific country thoroughbred racing calendar to provide certainty about the application of the funding; and
- require RQ to report on expenditure on country thoroughbred racing in its Annual Report.

The Bill also amends the *Payroll Tax Act 1971* (Payroll Tax Act) from 1 January 2023 to provide administrative, machinery and transitional arrangements in relation to the mental health levy which is imposed from that date. In particular, the Payroll Tax Act is amended to:

- provide that:
 - the existing formulae for calculation of the primary periodic threshold and additional periodic threshold (collectively, the periodic thresholds) for an employer for a financial year appropriately reflect particular events occurring during the year;

- the periodic thresholds are to be calculated in accordance with those formulae, unless the Commissioner of State Revenue (the Commissioner) has made a determination of the periodic thresholds applicable to the employer (a threshold determination); and
 - appropriate reassessments must be made to give effect to the making or revocation of a threshold determination;
- (collectively, the threshold measure);
- clarify that there is no periodic levy liability for the last periodic return period in a financial year, consistent with the existing approach for payroll tax;
 - ensure that an employer's annual levy liability for a financial year appropriately reflects any relevant final returns that have been lodged during the year;
 - in relation to employers who are members of a group for payroll tax and mental health levy purposes (group):
 - require the provision of particular information by:
 - the designated group employer (DGE) to members of the group other than the DGE (non-DGE group members); and
 - non-DGE group members to the DGE; and
 - authorise (but not require) the provision of particular information by the Commissioner to the DGE;

to facilitate the calculation of the levy and the lodgement of periodic, annual and final returns, with failure by a DGE or non-DGE group member to provide such information being an offence (collectively, the information provision measure);

- extend the time for a DGE for a group to lodge final returns in relation to the mental health levy, and to clarify what wages are to be included in such returns;
- clarify that the purposes for which revenue raised by the mental health levy may be used relate only to the levy, and not associated amounts such as unpaid tax interest or penalty tax;
- apply relevant provisions to the mental health levy as well as payroll tax;
- provide that an employer who engages in certain conduct in relation to the mental health levy (such as failing to lodge a return, or avoiding or attempting to avoid levy) commits an offence or may have a penalty imposed by the Commissioner (the conduct measure); and
- appropriately deal with liability for the mental health levy commencing partway through the 2022-23 financial year.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the *Human Rights Act 2019* (Human Rights Act) that are relevant to the Bill are:

- property rights (section 24 of the Human Rights Act) in respect of the amendments to the Betting Tax Act to impose a racing levy and incorporate free bets (the betting tax measures), the threshold measure, the information provision measure and the conduct measure; and
- the right to privacy (section 25 of the Human Rights Act) in respect of the information provision measure.

For the reasons outlined below, I am of the view that the Bill is compatible with these human rights.

The other amendments contained in the Bill have no adverse impact on the human rights protected by the Human Rights Act.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Betting tax measures

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 will amend the Betting Tax Act to apply a 5 per cent racing levy from 1 December 2022, effectively raising 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 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 will amend the Betting Tax Act to incorporate free bets into the calculation of taxable wagering revenue, from 1 December 2022.

(a) The nature of the right

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

The right includes the protection from the arbitrary deprivation of property. ‘Arbitrary’ in the human rights context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.

The term ‘deprived’ is not defined by the Human Rights Act, however deprivation in this sense is considered to include the substantial restriction on a person’s use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

International human rights law provides an indication that the right to property in section 24 of the Human Rights Act is engaged by an increase in taxes.

The betting tax measures limit this right.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the betting tax measures is to provide for a long-term sustainable funding model for the Queensland racing industry and provide greater certainty of funding. Imposition of the racing levy and taxation of free bets also ensures that all wagering operators who profit from Queensland’s racing industry contribute to investment in the industry.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom as it will ensure Queensland’s racing industry is adequately funded. Long-term funding certainty will provide opportunities to increase prize money, enhance infrastructure, and provide better training facilities.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The betting tax measures necessarily limits the right to property by imposing a racing levy and taxing free bets, in order to achieve the purpose noted above. That is, the measures are necessary to provide long-term sustainable funding for Queensland’s racing industry.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the betting tax measures. As noted above, it is necessary imposition of a racing levy and taxation of free bets are necessary to achieve the purpose.

Further, section 11 of the Human Rights Act provides that only individuals have human rights. When considering the impact that the betting tax measures will have on individuals, it is relevant that most betting operators will be corporations rather than individuals. The betting tax measures will therefore have limited impact on individuals, which minimises the potential for any limitation on human rights

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In my opinion, the potential impact of the betting tax measures on an individual's property rights is outweighed by the benefits to the State and citizens in ensuring Queensland's racing industry is adequately and sustainably funded over the long term.

In reaching this view, it is significant that the betting tax measures:

- necessarily require imposition of a racing levy and taxation of free bets to achieve the purpose; and
- will largely impact corporations rather than individuals and will therefore have limited impact on the human rights of an individual.

(f) any other relevant factors

Nil.

Threshold measure

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

- a mental health levy is imposed on employers, or groups of employers, with annual Australian taxable wages over \$10 million – in this context, ‘Australian taxable wages’ means wages that are either taxable wages under the Payroll Tax Act (taxable wages) or interstate wages (being wages that are taxable wages under the payroll tax legislation of another Australian state or territory);
- 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, in accordance with formulae (the existing formulae), 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 framework does not address the situation where the Commissioner forms the view that the estimates of taxable wages and interstate wages by an employer or group are inappropriate or unreasonable (with a consequential impact on the appropriateness of the periodic thresholds).

To address these issues, the Bill amends the Payroll Tax Act to:

- provide that the periodic thresholds are:
 - the thresholds for the period determined by the Commissioner in a threshold determination; or
 - if the Commissioner has not made a threshold determination – the amount worked out with reference to the existing formulae, as at the most recent *levy calculation date*;
- insert a definition of ‘levy calculation date’ that ensures that the periodic thresholds for the remaining periodic return periods in a financial year are recalculated using the existing formulae 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), using more current estimates;
- provide that where the Commissioner makes or revokes a threshold determination in respect of a periodic return period for which an assessment of mental health levy has already been made, a reassessment of mental health levy for that period must be made.

The threshold measure limits the human right of property rights (section 24 Human Rights Act).

(a) The nature of the right

As noted above, the right to property protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property.

The threshold measure limits this right for an individual, as it has the potential to affect the amount of the individual’s liability for the mental health levy for a particular periodic return period if:

- a threshold determination applies for the period and the primary periodic threshold or additional periodic threshold applicable under that determination is different to the threshold that would otherwise apply under the existing formulae; or
- no threshold determination applies for the period, but the existing formulae must be applied as at a different levy calculation date.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Although the annual reconciliation process will ensure that an employer or group of employers pay an appropriate amount of mental health levy overall for a financial year, the purpose of the threshold measure is to ensure that an appropriate amount of levy is paid on a periodic basis.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom because it ensures that society will benefit through increased availability of State-funded mental health services, funded by the mental health levy.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The threshold measure ensures that the periodic payments of the levy are based on reasonable estimates (through the ability of the Commissioner to make a threshold determination), which properly reflect changes in circumstances which occur during the year (through the concept of the levy calculation date). This may potentially change the amount of mental health levy that would otherwise be payable by an employer for a periodic return period, thus affecting an individual's right to property.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the threshold measure.

As noted, the purpose of the threshold measure is to ensure that the mental health levy is paid appropriately on a periodic basis. For a non-group employer, the threshold measure will not change the employer's total levy liability for the financial year. This is because, under existing 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 financial 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.

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 existing 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 application of the threshold measure 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.

Further, section 11 of the Human Rights Act provides that only individuals have human rights. When considering the impact that the threshold measure will have on individuals, it is relevant that most entities liable for the levy will be corporations rather than individuals. The threshold measure will therefore have limited impact on individuals, which minimises the potential for any limitation on human rights.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In my opinion, the potential impact of the threshold measure on an individual's property rights is outweighed by the benefits to the State and citizens in ensuring that mental health levy is paid appropriately on a periodic basis.

In reaching this view, it is significant that the threshold measure:

- affects the timing of payment of mental health levy within a financial year, but not the overall liability for the financial year for a non-group employer or a group; and
- will largely impact corporations rather than individuals and will therefore have limited impact on the human rights of an individual.

(f) any other relevant factors

Nil.

Information provision measure

Under existing 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 DGE's annual levy liability 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; and
- where a change of status (as defined) happens for 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 Bill amends the Payroll Tax Act 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

on various occasions (such as following a change of status happening for a non-DGE group member); and

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

Additionally, the Bill amends the Payroll Tax Act to authorise (but not require) the Commissioner to disclose to a DGE information previously provided by another DGE for the group to the Commissioner. This is intended to facilitate an orderly transition of administration where the DGE for a group changes.

The information provision measure limits the human rights of property rights (section 24 Human Rights Act) and the right to privacy (section 25 Human Rights Act).

(a) The nature of the right

As noted above, the right to property protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property.

The information provision measure limits this right by providing that a failure to comply with a requirement to provide information without reasonable excuse will constitute an offence with a maximum penalty of 100 penalty units.

The *right to privacy* protects the individual from all interferences and attacks upon their privacy, family, home, and correspondence (written and verbal). It protects privacy in the sense of personal information, data collection and correspondence but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, and correspondence. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The information provision measure limits this right by:

- imposing requirements on a DGE or a non-DGE group member to provide particular information; and
- authorising the Commissioner to provide particular information to a DGE.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the information provision measure is to ensure that:

- the DGE and non-DGE group members have relevant information available to them to allow them to comply with their obligations under the Payroll Tax Act in relation to, amongst other things, the calculation of the levy and the lodgement of periodic, annual and/or final returns;

- the provision of such information in accordance with legislatively-prescribed timeframes is encouraged by making it an offence to fail to provide information as required without reasonable excuse; and
- if necessary, the Commissioner is empowered to disclose particular information to a DGE to facilitate an orderly transition of administration of the group's mental health levy liability where there is a change of DGE.

These purposes are consistent with a free and democratic society based on human dignity, equality and freedom because they:

- promote administration of the mental health levy framework, which as noted above supports the funding of State-funded mental health services; and
- facilitate a DGE or non-DGE group member obtaining information which is necessary to comply with its obligations under the Payroll Tax Act in relation to the levy.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

In relation to the information to be provided by non-DGE group members to the DGE as part of the information provision measure, 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
- 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 as part of the information provision measure is limited to the group's total estimated taxable wages and interstate wages, which as noted are 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.

A DGE or non-DGE group member who fails to provide information as required without reasonable excuse will commit an offence, which will impact their right to property to the extent of the penalty imposed.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the information provision measure.

The way in which the mental health levy is to be calculated for members of a group (including the DGE) under existing provisions of the Payroll Tax Act which will commence on 1 January 2023 implicitly requires the exchange of information between group members. Without the information provision measure, it would be left to group members to determine as between themselves the arrangements for the provision of such information. That is, practically the information provision measure does not create new obligations to provide information between group members, but simply provides legislative clarity as to what information needs to be provided and the consequences for non-provision.

The requirement for employers in a group to disclose certain private information is broadly consistent with existing disclosure requirements in relation to payroll tax administration. That is, like the payroll tax system as it applies in relation to groups of employers, disclosure of certain information between group members is required to facilitate appropriate administration of the levy in a group context. This is because, as noted, the requirement for a particular employer in a group to pay the levy depends on the total annual Australian taxable wages of all employers in the group.

In addition, a number of safeguards exist to mitigate the impact on individuals, including strict confidentiality provisions in the *Taxation Administration Act 2001* (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.

The maximum penalties for offences in relation to the non-provision of information for mental health levy purposes are consistent with the maximum penalties for existing offences in the Payroll Tax Act in relation to the non-provision of information for payroll tax purposes. Those existing offences, and the associated penalties, are a critical tool for ensuring compliance with obligations to provide information.

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.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In my opinion, the potential impact of the information provision measure on an individual's property rights and right to privacy is outweighed by the benefits to the State and citizens in ensuring that the State has ongoing sustainable funding available for critical elements of the State's mental health expenditure.

In reaching this view, it is significant that:

- the information to be provided by the DGE to non-DGE group members, and by non-DGE group members to the DGE, is critical to the DGE and non-DGE group members calculating their liability for the mental health levy under existing provisions of the Payroll Tax Act which will commence on 1 January 2023;
- an individual's property rights will only be affected as a result of the action (or inaction) of the individual, in engaging in the particular conduct that constitutes an offence;
- an offence is only committed in relation to the non-provision of information where there is no reasonable excuse for such non-provision; and
- the information provision measure will largely impact corporations rather than individuals and will therefore have limited impact on the human rights of an individual.

- (f) any other relevant factors

Nil.

Conduct measure

Under existing provisions of the Payroll Tax Act, where:

- an employer:
 - does not lodge a periodic return, annual return or final return in contravention of the Payroll Tax Act;
 - does not pay, in contravention of the Payroll Tax Act, an amount of the employer's liability for payroll tax in relation to a return; or
 - gives the Commissioner a return containing false or misleading information in contravention of the Taxation Administration Act;

the Commissioner may, by written notice, require the employer to pay a penalty of not more than 75% of the amount of the employer's liability for payroll tax in relation to the return, or \$100 (whichever is greater); and

- a person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid payroll tax chargeable under the Payroll Tax Act 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.

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

The conduct measure limits the human right of property rights (section 24 Human Rights Act).

(a) The nature of the right

As noted above, the right to property protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property.

The conduct measure limits this right by providing that an employer or person who engages in particular conduct in relation to the mental health levy commits an offence, or may have a penalty imposed by the Commissioner.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the conduct measure is to provide appropriate sanctions for non-compliance with existing provisions of the Payroll Tax Act in relation to the mental health levy which will commence on 1 January 2023.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom, as compliance by employers with their obligations in relation to lodgement of returns and payment of mental health levy is critical to ensuring the correct amount of mental health levy is collected in a timely fashion, to be applied for increasing the availability of State-funded mental health services.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

A person engaging in particular conduct commits an offence, or may have a penalty imposed by the Commissioner, which will impact a person's right to property to the extent of the penalty.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the conduct measure.

As noted, an employer engaging in particular conduct in relation to the employer's payroll tax obligations commits an offence, or may have a penalty imposed by the Commissioner. Those existing consequences are a critical tool for ensuring compliance with legislative obligations, and are appropriate to apply in relation to the mental health levy.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

In my opinion, the potential impact of the conduct measure on an individual's property rights is outweighed by the benefits to the State and citizens in ensuring that the State has ongoing sustainable funding available for critical elements of the State's mental health expenditure.

In reaching this view, it is significant that:

- an individual's property rights will only be affected as a result of the action (or inaction) of the individual, in engaging in the particular conduct that constitutes the offence or enlivens the penalty; and
- the conduct measure will largely impact corporations rather than individuals and will therefore have limited impact on the human rights of an individual.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Bill is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that it is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE CAMERON DICK MP
TREASURER
MINISTER FOR TRADE AND INVESTMENT

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