

Revenue 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 Revenue 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 will amend the following legislation administered by the Commissioner of State Revenue (the Commissioner):

- *Duties Act 2001* (Duties Act), to:
 - provide an exemption (the AFAD exemption) from additional foreign acquirer duty (AFAD) for holders of subclass 405 and 410 visas (retirement visas) on the purchase of their principal place of residence on or after 1 January 2023, subject to certain conditions (the AFAD exemption measure);
 - provide an exemption from transfer duty and vehicle registration duty for certain transactions relating to particular small business restructures from 7 September 2020 or 28 June 2021;
 - extend the exemption from transfer duty under section 124 of the Duties Act to certain dutiable transactions involving the vesting of dutiable property under the *Succession Act 1981* from 3 April 2017 and the *Aboriginal and Torres Strait Islander Land Holding Act 2013* from 6 August 2019; and
 - introduce an exemption from transfer duty and landholder duty for certain transactions associated with Queensland Future (Debt Retirement) Fund asset contributions and investments;
- *Duties Regulation 2013*, to:
 - prescribe Euronext N.V. as a recognised stock exchange from 1 January 2017; and
 - reflect the change of name of the Asia Pacific Stock Exchange to the Sydney Stock Exchange;for the purposes of determining the transfer duty and landholder duty consequences under the Duties Act of certain transactions involving entities listed on a recognised stock exchange;
- *First Home Owner Grant and Other Home Owner Grants Act 2000* (FHOG and Other Grants Act), to clarify that the amount of the HomeBuilder Grant (the grant) is \$15,000 for eligible transactions where the contract was made between 1 January 2021 and 31

March 2021 (relevant transactions), in accordance with the Australian Government's policy (the HomeBuilder measure);

- *Land Tax Act 2010* (Land Tax Act), to enable the value of interstate landholdings to be accounted for when assessing land tax payable in Queensland (the land tax reform);
- *Mineral Resources Regulation 2013* (Mineral Resources Regulation), to adjust the coal royalty rate structure by introducing additional tiered rates of 20 per cent, 30 per cent and 40 per cent on that part of the average price per tonne of the coal sold, disposed of or used in a return period that is more than A\$175, A\$225 and A\$300 respectively with effect for liabilities from 1 July 2022 (the royalty rate measure);
- *Payroll Tax Act 1971* (Payroll Tax Act), to:
 - impose a mental health levy from 1 January 2023, payable by employers, or groups of employers, with annual Australian taxable wages (for payroll tax purposes) over \$10 million (the mental health levy measure);
 - increase the phase out rate for deductions from 1 January 2023 to enable employers or groups of employers with annual Australian taxable wages of \$6.5 million or more to receive the benefit of deductions; and
 - extend the 50 per cent rebate for wages paid or payable to apprentices and trainees to include wages paid or payable during the financial years ending on 30 June 2022 and 30 June 2023; and
- *Gaming Machine Regulation 2002* to temporarily reduce the proportion of proceeds from the sale of category 1 licensed premises operating authorities paid by the seller into the consolidated fund to 15 per cent (from 33 per cent) for a trial period of 12 months.

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:

- the right to freedom of movement (section 19 of the Human Rights Act) in respect of the AFAD exemption measure;
- property rights (section 24 of the Human Rights Act) in respect of the AFAD exemption measure, the HomeBuilder measure, the land tax reform, the royalty rate measure and the mental health levy measure; and
- the right to privacy (section 25 of the Human Rights Act) in respect of the AFAD exemption measure, the land tax reform and the mental health levy 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*)

AFAD exemption measure

The Bill amends the Duties Act to provide an exemption from additional foreign acquirer duty (AFAD) for holders of retirement visas on the purchase of their principal place of residence on or after 1 January 2023.

A retirement visa holder's eligibility for the full AFAD exemption is dependent upon, amongst other things, the holder:

- not disposing of their interest in the relevant land before the holder commences occupation of the residence as their principal place of residence (the non-disposal requirement);
- commencing occupation of the relevant residence as their principal place of residence within one year (for land on which a residence is located at the time the liability for transfer duty arises) or two years (for vacant land) of the date on which the holder is entitled to possession under the transfer, or agreement for the transfer, of the land (the occupation commencement requirement); and
- occupying the residence as their principal place of residence for a period of one year following such commencement (the occupation duration requirement).

Other than in limited circumstances, failure to meet the non-disposal requirement, the occupation requirement or the occupation duration requirement (collectively, the residence requirements) will result in the Commissioner making a reassessment to fully or partially remove the benefit of the AFAD exemption. Further, a retirement visa holder will be required to notify the Commissioner of the holder's failure to meet a residence requirement (the notification requirement).

The AFAD exemption measure limits the human rights of freedom of movement (section 19 Human Rights Act), property rights (section 24 Human Rights Act) and the right to privacy (section 25 Human Rights Act).

(a) the nature of the right

The *right to freedom of movement* provides that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. It also protects the rights of individuals to enter and leave Queensland.

The AFAD exemption measure limits this right by making eligibility for the full AFAD exemption conditional upon the retirement visa holder complying with the residence requirements. In particular, the occupation commencement requirement and the occupation duration requirement restrict the holder's ability to determine where they live for the relevant period.

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).

The AFAD exemption measure limits this right by:

- requiring the Commissioner to make a reassessment to fully or partially remove the benefit of the AFAD exemption where the retirement visa holder fails to comply with a residence requirement (other than in limited circumstances) (the reassessment requirement), with such reassessment also triggering unpaid tax interest and penalty tax under the *Taxation Administration Act 2001* (Taxation Administration Act); and
- imposing the notification requirement, with failure to so notify constituting an offence under an existing provision of the Taxation Administration Act 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 AFAD exemption measure limits this right by imposing the notification requirement.

(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 intention of AFAD generally is to ensure that foreign acquirers, who benefit from State Government services and infrastructure, make an appropriate contribution to their delivery (as such acquirers are not necessarily subject to some of the other major sources of Government revenue). Against that backdrop, the purpose of imposing conditions on eligibility for the AFAD exemption (including the residence requirements) is to ensure that the exemption applies only in limited circumstances (i.e. for specific classes of visa holder, and only in respect of a property which such a holder will make their principal place of residence).

As the time at which an AFAD liability would otherwise arise for a retirement visa holder (i.e. at the time of the transfer, or the agreement to transfer, the property) is before the residence requirements can be fully satisfied, a holder who applies for the AFAD exemption at that time is doing so in anticipation of satisfying those requirements. That is to say, the Commissioner (or a self assessor assessing liabilities on the Commissioner's behalf) will apply the AFAD exemption on the basis of declarations which will be made by the holder in an application for the exemption as to their intention to satisfy the residence requirements.

The purpose of the reassessment requirement in relation to the AFAD exemption measure is to ensure that, if the holder subsequently fails to satisfy the residence requirements (other than in limited circumstances), the Commissioner is empowered to reassess the holder's AFAD liability to fully or partially remove the benefit of the exemption, depending on which such requirement is not satisfied. Without a mechanism to reassess, a holder could access the benefit of the exemption at the time of the transaction, without having an intention to occupy the property as their home, and effectively avoid payment of the full amount of duty.

Although the Commissioner will conduct compliance activities to identify where retirement visa holders fail to satisfy a residence requirement, the purpose of the notification requirement is to alert the Commissioner as to when such non-satisfaction occurs (even if that is on account of the limited circumstances which would not trigger the reassessment requirement).

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

- the AFAD exemption is only available in limited circumstances, noting the purposes of AFAD;
- a retirement visa holder can claim the benefit of the AFAD exemption in anticipation of satisfying the residence requirements (i.e. it is not necessary for a holder to pay AFAD, satisfy the residence requirements and then request that the Commissioner make a reassessment to have that amount of AFAD refunded); and
- community expectations are met that, where the AFAD exemption has been claimed by a retirement visa holder who fails to satisfy the residence requirements, there is an appropriate framework in place to facilitate the Commissioner wholly or partially removing the benefit of the exemption and to discourage non-compliance with the notification requirement.

(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 right to freedom of movement, given the intention of the AFAD exemption (i.e. to provide an exemption for a retirement visa holder in respect of a property in which the holder will reside as their principal place of residence), eligibility requirements for the exemption that are directed to ensuring that the holder actually does reside in the property as their principal place of residence are necessary. The residence requirements do not legally prevent the holder from residing elsewhere during the relevant period, but merely specify the consequences of doing so (i.e. full or partial reassessment to remove the exemption, with attendant penalty tax and unpaid tax interest consequences, and an obligation to notify the Commissioner).

Where a retirement visa holder fails to satisfy a residence requirement and a reassessment occurs to wholly or partially remove the benefit of the exemption, property rights will necessarily be impacted to the extent that the holder is required to pay AFAD, penalty tax and unpaid tax interest. This is consistent with the general operation of the Taxation Administration Act (i.e. penalty tax and unpaid tax are imposed automatically upon a reassessment which increases a taxpayer's liability). The Commissioner may potentially wholly or partially remit penalty tax on an AFAD exemption reassessment on a case-by-case basis, having regard to all relevant facts and circumstances such as the reason for the holder's failure to satisfy the residence requirements, the nature and circumstances of any voluntary disclosure made by the holder to the Commissioner, and the degree of the holder's cooperation with the Commissioner. Similarly, the Commissioner has a power under the Taxation Administration Act to wholly or partially remit unpaid tax interest, which will again be considered on a case-by-case basis. Further, failure to comply with the notification obligation will necessarily affect the property rights of a holder to the extent that a penalty is imposed for commission of an offence.

The notification obligation necessarily impacts the right to privacy of a retirement visa holder, by requiring the holder to disclose to the Commissioner the personal affairs of the holder, being a failure by the holder to comply with a residence requirement. Further, as there will be limited circumstances in which such a failure will not trigger a reassessment to remove the benefit of the exemption (for instance, where a natural disaster has occurred), the holder will be given an option (but will not be obliged) to disclose any relevant circumstances to the Commissioner.

(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 AFAD exemption measure.

As noted, the nature of the AFAD exemption means that eligibility tests for the exemption will necessarily and appropriately involve determining whether the retirement visa holder actually occupies the relevant property as their principal place of residence. If the exemption could only be claimed after the residence requirements were satisfied, then, compared to allowing the holder to claim the exemption up-front and satisfy those requirements afterwards:

- the impacts on a holder's right to freedom of movement would be the same;
- there would be less of an impact on a holder's property rights, in that:
 - penalty tax and unpaid tax interest would not be imposed if the holder did not satisfy the residence requirements (because no reassessment to fully or partially remove the exemption would be required); and
 - no offence would be committed by failing to notify the Commissioner that the residence requirements had not been satisfied; and
- there would potentially be less of an impact on the right to privacy of a holder who did not satisfy the residence requirements, as the holder would not be required to notify the Commissioner because the holder would not be applying for the AFAD exemption; and
- there would be different impacts on the right to privacy of a holder who did satisfy the residence requirements, as the holder would be required to notify the Commissioner of such satisfaction if applying for the AFAD exemption.

The AFAD exemption measure anticipates that a retirement visa holder would apply for the exemption at the time that the liability for AFAD arises. However, it is open to a holder to wait

until after the residence requirements have been satisfied before requesting that the Commissioner reassess the holder's AFAD liability to apply the benefit of the exemption (noting that, under the Taxation Administration Act, the Commissioner is not obliged to make a reassessment which decreases the holder's AFAD liability). That is, it is a choice for each eligible retirement visa holder as to whether they wish to accept the impact on their property rights and right to privacy associated with claiming the AFAD exemption up-front.

(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 AFAD exemption measure on an individual's right of freedom of movement, property rights and the right to privacy is outweighed by the benefits to the State and citizens in ensuring that the AFAD exemption is only available in appropriate cases and subject to appropriate conditions.

In reaching this view, it is significant that:

- it is a decision for an eligible retirement visa holder as to whether the holder will apply for the AFAD exemption;
- a holder applying for the exemption will be made aware of the obligations to meet the residence requirements and of the notification requirement (i.e. the holder will be aware of the impact on their human rights of applying for the exemption); and
- the residence requirements are based on long-established eligibility criteria which apply to all taxpayers who wish to claim a concession for transfer duty in relation to the purchase of a property to be used as their principal place of residence.

(f) any other relevant factors

Nil.

HomeBuilder measure

The Bill amends the FHOG and Other Grants Act to clarify that a reduced \$15,000 grant is available for relevant transactions, with retrospective effect from 1 January 2021.

On 4 June 2020, the Australian Government announced the HomeBuilder Grant program, which provided a \$25,000 grant to eligible owner-occupiers who build a new home or substantially renovate an existing home, where the contract was made between 4 June 2020 and 31 December 2020, both dates inclusive (the initial grant period).

State and Territory governments administer the grant on behalf of the Australian Government in accordance with the program guidelines set out under the National Partnership Agreement (NPA). In Queensland, in addition to the NPA, the grant is administered in accordance with the Administrative Direction on HomeBuilder made by the Treasurer and Minister for Infrastructure and Planning (as he was at the time) (the administrative direction) and the grant provisions in the FHOG and Other Grants Act.

On 29 November 2020, the Australian Government announced an extension of the grant at a reduced amount of \$15,000 for eligible transactions where the contract was made between 1 January 2021 and 31 March 2021, both dates inclusive (the extended grant period). The NPA and the administrative direction have been updated to reflect the reduced grant amount for the extended grant period. However, the FHOG and Other Grants Act still provides that the amount of the grant for relevant transactions is \$25,000, as the Act does not distinguish between grants payable in respect of contracts made during the initial grant period and contracts made during the extended grant period.

The HomeBuilder 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 HomeBuilder measure limits this right by retrospectively changing the amount of the grant specified in the FHOG and Other Grants Act as being payable in respect of a relevant transaction, from \$25,000 to \$15,000.

(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 HomeBuilder measure is to ensure that the FHOG and Other Grants Act is consistent with the NPA, the administrative direction and the Commissioner's practice in relation to the quantum of the grant payable in respect of eligible transactions where the contract was made during the extended grant period.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom because it will provide legislative certainty as to the entitlement of eligible grant applicants in respect of relevant transactions, and support equity for all applicants who entered into a contract during the extended grant period.

(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

Amendment of the FHOG and Other Grants Act to reflect that the grant payable in respect of a relevant transaction is \$15,000 necessarily affects the right to property, because the FHOG and Other Grants Act otherwise suggests that the amount payable would be \$25,000.

(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 or reasonably available ways to achieve the purpose of the HomeBuilder measure.

As noted, the reduction in the grant amount for relevant transactions has, to date, been effected through amendments to the NPA and the administrative direction. As a matter of practice, any eligible applicant in respect of a relevant transaction has been, or would be, paid a grant of \$15,000 despite the FHOG and Other Grants Act stating that a grant of \$25,000 would be payable. Although continued reliance on the NPA and the administrative direction to achieve that outcome is possible, this would result in no lesser an impact on an individual's property rights than the HomeBuilder measure (because the amount of the grant paid to an eligible applicant would not be any different).

(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 HomeBuilder measure on an individual's property rights is outweighed by the benefits to the State and citizens in ensuring that the FHOG and Other Grants Act reflects the amount of the grant that has been or will be paid to eligible applicants in respect of a relevant transaction.

In reaching this view, it is significant that:

- the HomeBuilder measure will have no practical impact on individuals who have already been paid the grant in respect of a relevant transaction, as they will have been paid a grant of \$15,000 (in accordance with the NPA and the administrative direction) rather than the \$25,000 specified in the FHOG and Other Grants Act – that is, retrospective amendment of the FHOG and Other Grants Act in relation to relevant transactions will not require any eligible person to repay the \$10,000 difference, because no such person was ever paid \$25,000;
- Australian Government and Queensland Government information (for example, information provided online and through media statements) has clearly and consistently distinguished between different grant amounts for the initial grant period and the extended grant period; and
- before submitting an application for the grant in relation to a relevant transaction, applicants were required to sign a declaration that they had read and understood the administrative direction, which was updated to reflect the reduced \$15,000 grant amount on 16 December 2020.

(f) any other relevant factors

Nil.

Land tax reform

Land tax is currently imposed on the total value of taxable land owned by a person at midnight on 30 June. Under the Land Tax Act, taxable land includes all freehold land in Queensland which is not exempt (taxable land).

Any land that a person owns interstate is not currently relevant for Queensland land tax purposes. As a result, the amount of land tax payable by owners with similarly valued

landholdings can differ, depending on whether they hold land solely in Queensland or across multiple jurisdictions.

The Bill amends the Land Tax Act to re-design the existing land tax framework to implement the land tax reform. To give certainty to potentially impacted owners, these amendments will be progressed in the 2021-22 financial year. However, the land tax reform will be implemented from the 2023-24 financial year.

In particular, the Bill amends the Land Tax Act to:

- generally make all freehold land in other states and Crown leasehold land in the Australian Capital Territory (interstate land) relevant in the land tax framework for calculating land tax payable on taxable land, generally consistent with the types of land currently relevant for calculating land tax. Interstate land will generally be ‘relevant interstate land’ if it is not excluded;
- introduce a new land tax calculation methodology which takes into account the total value of all taxable land and relevant interstate land (Australian land) for determining whether the tax-free threshold for land tax has been exceeded and the appropriate rate of land tax. This rate will then be applied to the Queensland proportion of the total value of Australian land owned by the owner;
- ensure that existing exemptions in the Land Tax Act, as appropriate, be equally available to interstate land. Where interstate land meets the relevant requirements (or generally equivalent requirements) of an existing exemption, it will be excluded from the calculation methodology;
- specify the relevant value that will be used for interstate land for a financial year, being a relevant value (as at 30 June of the immediately preceding financial year) determined under corresponding interstate land valuation legislation which is the closest equivalent to the *Land Valuation Act 2010* value currently used for taxable land (statutory value); and
- require that owners of both taxable and interstate land notify the Commissioner of information about the interstate land they own, including what interstate land they own, the statutory value of that land and the extent of their interest in the land.

The land tax reform engages property rights (section 24 Human Rights Act) and the right to privacy and reputation (section 25 Human Rights Act).

(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 in 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 depriving 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 land tax reform addresses an inequity in the current land tax framework, rather than increasing land tax, and will not alter the current rates or thresholds for land tax. However, the land tax reform will mean that relevant interstate land is taken into account in determining an owner’s land tax liability, which may result in some landowners becoming liable for land tax for the first time or having an increased land tax liability.

Additionally, a self-declaration model will apply for administering the land tax reform and owners of both Queensland and interstate land will be required to disclose certain information about their landholdings to the Commissioner (new notification obligation). Where an owner fails to comply with the new notification obligation, they may be subject to existing provisions in the Taxation Administration Act which impose interest and penalty tax. Consistent with the existing notification obligations in the Land Tax Act, where an owner fails to comply with the new notification obligation, they may also be subject to an existing offence provision under the Taxation Administration Act. As money is a form of property, this may engage a person’s property rights.

Section 25 of the Human Rights Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and not to have their reputation unlawfully attacked. The right protects privacy in the sense of personal information, data collection and correspondence, as well as an individual’s private life more generally. An unlawful and arbitrary interference would be one not permitted by law or that would be capricious, unpredictable or unjust.

As discussed above, under the land tax reform a new notification obligation will be imposed on owners of both taxable land and interstate land requiring them to disclose particular information in relation to their interstate land. To assist owners to comply with this obligation, data will be used to identify potentially impacted owners. In certain circumstances, the Commissioner may use interstate landholding information known to the Commissioner to source more complete data from a third party. Additionally, where the Commissioner has identified that an owner is potentially impacted by the land tax reform, the Commissioner will provide that owner with the relevant landholding information. To the extent any of the information includes personal information about an individual, it may engage the right to privacy.

(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 land tax reform is to enable interstate landholdings to be accounted for in determining an owner's liability for land tax in Queensland. This is to address an inequity that can result in a landholder with all of their landholdings in Queensland paying more land tax than a landholder with a similar value of landholdings spread across jurisdictions because interstate land is not currently relevant for Queensland land tax purposes. The administration of the land tax reform under a self-declaration model is the most efficient and effective way of supporting the recovery of land tax under the reform.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom as it promotes more equitable land tax treatment in Queensland for owners across jurisdictions with similarly valued landholdings. As land tax is an integral part of Queensland's revenue base, effective and equitable land tax administration will support maintenance of the public revenue and the delivery of essential infrastructure and services for the community.

(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

As discussed above, the land tax reform introduces a new calculation methodology, whereby an owner's liability for land tax will be determined based on the total value of Australian land owned by the owner, rather than solely on their taxable land. As interstate land is not currently relevant for Queensland land tax purposes, it is necessary to re-design the land tax framework to enable relevant interstate land to be taken into account. While this will result in particular owners paying land tax for the first time or additional land tax, this is consistent with the overall policy objective.

To administer the land tax reform, the Commissioner will necessarily need to know particular information about an owner's interstate land in order to determine their land tax liability. The most efficient and effective way to achieve this is to introduce a new notification obligation for owners of both taxable land and interstate land which will be assisted by the Commissioner.

To incentivise compliance, it is necessary for the new notification obligation to be subject to existing provisions in the Taxation Administration Act which impose interest and penalty tax and for this new obligation is subject to an offence provision under the Taxation Administration Act, consistent with other notification obligations under the Land Tax Act.

As such, the limiting effect of the new notification obligation on an individual's right to privacy and property rights helps achieve the purpose of the land tax reform as it facilitates and incentivises the provision of information about interstate land to the Commissioner for the purposes of the Commissioner determining an owner's liability for land tax.

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

It is considered there are no less restrictive or reasonably available ways to achieve the purpose of the land tax reform.

As interstate land is not currently relevant for Queensland land tax purposes, it is necessary to re-design the land tax framework to enable relevant interstate land to be taken into account. However, the land tax reform does not alter the existing rates or thresholds and land tax continues to be *imposed* on taxable land, not on interstate land. In addition, the types of interstate land that will be taken into account for calculating land tax are generally consistent with the types of Queensland land that are currently taken into account for land tax purposes. The amendments to implement the land tax reform are designed to, as far as possible, treat taxable land and interstate land equally. For example by ensuring that the existing exemptions available for Queensland land are, as appropriate, equally available to interstate land.

In this regard, while some owners may become subject to land tax for the first time or have an increased liability as a result of the land tax reform, it does not give rise to an arbitrary deprivation of a person's property and there is a public interest in addressing an identified inequity to ensure revenue for the State is appropriately raised.

To support the land tax framework and protect public revenue, it is critical that there are mechanisms in place to incentivise compliance with obligations under revenue legislation and this is particularly necessary for the new notification obligation as owners will be assessed for land tax on the basis of these notifications.

The provisions relating to interest and penalty tax and the offence provisions in the Taxation Administration Act are well established and apply consistently across Queensland's revenue laws, including to the existing notification obligations under the Land Tax Act. The approach taken, to subject a person who fails to comply with the new notification obligation to these provisions, will utilise this existing framework and provide consistent treatment with existing notification obligations under the Land Tax Act and other revenue laws.

The Commissioner has the power to remit interest and penalty tax having regard to the circumstances of the particular case. For example, cases where there are circumstances outside of a taxpayer's control can be contrasted with cases involving a deliberate disregard of obligations under revenue legislation. Consistent with all other taxpayers, owners will have the ability to challenge the imposition of interest and penalty tax by objecting to their assessment and, if dissatisfied with the decision on objection, appeal that decision. In circumstances where interest and penalty tax has been imposed, this is generally considered a sufficient sanction and prosecution under the offence provisions would only be pursued in cases of serious non-compliance.

Where prosecution under the offence provisions was pursued, proceedings would be taken in a summary way under the *Justices Act 1886* and owners would have an opportunity to challenge the offence under that framework, consistent with other offence provisions in revenue legislation. It is also relevant to note that these provisions are only enlivened in circumstances where a person does not comply with their obligations under the Land Tax Act.

Additionally, voluntary compliance with obligations under the Land Tax Act is promoted by ensuring comprehensive information and assistance is available to enable taxpayers to meet their obligations. As the land tax reform will be implemented from the 2023-24 financial year,

the Queensland Revenue Office will commence client education during the 2022-23 financial year to help owners understand the change and their land tax obligations prior to implementation. Further, the Commissioner may also use relevant landholding information known to the Commissioner to assist owners to meet the new notification obligation under the land tax reform.

As such, where an individual's property rights are engaged because they fail to comply with the new notification obligation under the Land Tax Act, it is not considered that this would give rise to an arbitrary deprivation of a person's property. In addition, there is a public interest in ensuring appropriate mechanisms are in place to incentivise compliance with obligations under revenue legislation to facilitate the collection of revenue due to the State.

The self-declaration model being adopted to administer the land tax reform is the most appropriate way to implement the reform. The Commissioner will assist owners to comply with the new notification obligation by using data to identify potentially impacted owners and providing details of the interstate landholding information known to the Commissioner to them, potentially making it easier for these owners to notify as it may reduce the extent of the information they are required to source.

Under the self-declaration model, only information that is necessary to determine an owner's land tax liability will be collected (e.g. the interstate land they own, the extent of their interest in the land and its statutory value). As it is in Queensland, this type of information is available on interstate public registers which contain land ownership details, land identification information and land valuation information. In addition, the Commissioner is subject to strict confidentiality provisions under the Taxation Administration Act, which generally prohibit disclosure except in specific limited circumstances and unauthorised disclosure of confidential information is an offence, which provides a general safeguard to protect personal information. The *Information Privacy Act 2009* and the Queensland Government information security policy also protect individuals' privacy.

To the extent that the Commissioner discloses information to a third party to source more complete data in accordance with these provisions, the third party will be subject to provisions in the Taxation Administration Act which generally prohibit on-disclosure, except in specific limited circumstances. It is an offence to on-disclose information outside of these circumstances and a penalty may apply in cases of non-compliance. Additionally, any arrangements with a third party will be governed by a contract which will include confidentiality clauses.

Therefore, the provision of information under the new notification obligation and use of landholding information as proposed to support the self-declaration model, would not be an unlawful or arbitrary interference with a person's right to privacy.

(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 impacts of the land tax reform on an individual's property rights and right to privacy are outweighed by the broader benefits to the State and citizens that can be derived by enabling relevant interstate land to be taken into account for Queensland land tax purposes. In particular, it is in the public interest to ensure the equitable imposition of land tax and that there are appropriate mechanisms in place to incentivise compliance with obligations under revenue legislation to ensure the maintenance of public revenue.

The impact on an individual's property rights is mitigated by the fact that the measure will not alter the rates or thresholds for land tax and the approach to implement the land tax reform aims to treat interstate land, as far as possible, in the same way as Queensland land. In addition, the relevant provisions in the Taxation Administration Act will only be enlivened if an owner does not comply with the new notification obligation under the Land Tax Act, which is consistent with how the Taxation Administration Act operates in relation to other notification obligations under that Act and other revenue laws. Therefore, considering these factors in light of the broader benefits of the land tax reform, the limitation is considered reasonable and demonstrably justifiable.

Further, the impact on an individual's right to privacy is mitigated as only information necessary to determine an owner's liability for land tax will be collected and this type of information is available on public registers. In addition, a number of safeguards exist, including strict confidentiality provisions in the Taxation Administration Act and protections in the *Information Privacy Act 2009* and the Queensland Government information security policy, as well as confidentiality clauses in any agreement with a third party. Therefore, considering these factors in light of the broader benefits of the amendments, the limitation is considered reasonable and demonstrably justifiable.

(f) any other relevant factors

Nil.

Royalty rate measure

The *Mineral Resources Act 1989* (Mineral Resources Act) provides that a person who mines mineral is required to pay royalty at the prescribed rate in respect of that mineral.

Under Schedule 3, section 5 of the Mineral Resources Regulation, the royalty rate applicable to coal sold, disposed of or used during a return period by a particular royalty payer is calculated with reference to the *average price per tonne* of such coal for the royalty payer. The average price per tonne is calculated with reference to the sales revenue (or value determined by the Commissioner, in cases such as where there is no arm's length sale) attributable to all coal sold, disposed of or used by the royalty payer during the return period.

The existing progressive three-tier royalty rate structure on coal is 7 per cent on the part of the average price per tonne up to and including A\$100, 12.5 per cent on the part that is more than A\$100 but not more than A\$150, and 15 per cent on the part that is more than A\$150.

The Bill amends the Mineral Resources Regulation to apply three additional tiered rates of royalty, as follows:

- 20 per cent on that part of the average price per tonne that is more than A\$175 but not more than A\$225;
- 30 per cent on that part of the average price per tonne that is more than A\$225 but not more than A\$300; and
- 40 per cent on that part of the average price per tonne that is more than A\$300.

The royalty rate 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 royalty rate measure limits this right by increasing the effective percentage rate at which mineral royalty is payable (and, thus, the total amount of royalty payable) for coal sold, disposed of or used during a royalty return period where the average price per tonne of such coal is more than A\$175.

(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 royalty rate measure is to ensure that the State receives an appropriate return on the extraction of its non-renewable mineral resources (because, other than in limited circumstances, the State owns all coal in Queensland).

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom because it ensures that, where market conditions result in a particular royalty payer achieving high sales prices during a particular return period (such that the average price per tonne for a particular royalty payer is high for the period), society will also benefit through increased public revenue for the delivery of essential infrastructure and services for the community.

(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 prescription of additional tiers in the royalty rate structure necessarily affects the right to property, because the higher the effective rate at which royalty is payable (as a percentage of the value of the coal sold, disposed of or used during the return period), the more royalty that will be payable by the royalty payer.

(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 royalty rate measure.

Although the holder of a resource authority which permits the holder to extract coal (for example, a mining lease issued under the Mineral Resources Act) may be required to pay other amounts such as rent in relation to the resource authority, the royalty framework is the current mechanism by which the State is compensated for the extraction of its non-renewable mineral resources. For a number of minerals, including coal, royalty is imposed as a percentage of the value of the mineral sold, disposed of or used during a royalty return period, so that the return to the State increases as that value increases.

The impact on human rights of the royalty rate measure is on account of the requirement to pay an additional amount where the average price per tonne is more than A\$175, not the method in which it occurs (i.e. through the royalty framework). Any measure, whether or not legislated, which required a coal royalty payer to pay an additional amount to the State as the average price per tonne increased would have the same impact on human rights as the royalty rate measure.

Further, section 11 of the Human Rights Act provides that only individuals have human rights. When considering the impact that the royalty rate measure will have on individuals, it is relevant that most entities liable for coal royalty are corporations rather than individuals. The royalty rate 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 royalty rate measure on an individual's property rights is outweighed by the benefits to the State and citizens in ensuring that the State is appropriately compensated for the extraction of its non-renewable mineral resources.

In reaching this view, it is significant that the royalty rate 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.

Mental health levy measure

The Bill amends the Payroll Tax Act to apply a mental health levy (the levy) from 1 January 2023 to 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 or interstate wages (being wages that are taxable wages under the payroll tax legislation of another Australian state or territory).

The levy is applied in relation to taxable wages paid or payable on or after 1 January 2023, as follows:

- for an employer who is not a member of a group, the levy is equal to:
 - 0.25 per cent of the employer’s taxable wages, to the extent that the employer’s annual Australian taxable wages for a financial year exceed \$10 million; plus
 - an additional 0.5 per cent of the employer’s taxable wages, to the extent that the employer’s annual Australian taxable wages for a financial year exceed \$100 million; and
- for an employer who is a member of a group, the levy is equal to:
 - 0.25 per cent of the employer’s taxable wages, to the extent that the group’s annual Australian taxable wages for a financial year exceed \$10 million; plus
 - an additional 0.5 per cent of the employer’s taxable wages, to the extent that the group’s annual Australian taxable wages for a financial year exceed \$100 million.

The thresholds at which the levy becomes payable at the 0.25 per cent and 0.5 per cent rates for a particular employer are determined at the start of each financial year, having regard to whether the employer is a member of a group and whether the employer (or, if the employer is a member of the group, any other employer in the group) anticipates paying interstate wages in addition to taxable wages during the financial year.

The mental health levy 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 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 in 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 depriving profits from it).

The mental health levy measure limits this right to the extent that an employer is required to pay the levy where the annual Australian taxable wages of the employer, or the group of which the employer is a member, exceed \$10 million (and at a higher rate where such wages exceed \$100 million). Additionally, an employer that is a designated group employer may also be

required to provide for any shortfall in the group's liability for the levy in an annual or final return.

As noted above, the right to privacy provides that a person has a right not to have their privacy, family, home, and correspondence (written and verbal) unlawfully or arbitrarily interfered with, and not to have their reputation unlawfully attacked. It protects privacy in the sense of personal information, data collection and correspondence but also extends to an individual's private life more generally. An unlawful and arbitrary interference would be one not permitted by law or that would be capricious, unpredictable or unjust.

Under the mental health levy measure, employers are required to provide particular information to the Commissioner. Further, for employers in a group, the calculation of thresholds for the levy involve the sharing of particular information between group members. This may potentially limit the right to privacy and reputation, to the extent any of the information includes personal information about an individual.

(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 Queensland Government is investing in State-funded mental health services through the new five-year strategy *Better Care Together: a plan for Queensland's state-funded mental health, alcohol and other drug services*, as well as the *Achieving Balance: The Queensland Alcohol and Other Drugs Plan* and Queensland's obligations under the National Agreement on Mental Health and Suicide prevention. The purpose of the mental health levy measure is to provide ongoing sustainable funding for critical elements of the State's mental health expenditure.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom as it supports State-funded mental health services and promotes the ability of the Queensland community to access and benefit from these services through increased availability.

The mental health levy measure specifies that the proceeds of the levy are to be spent on 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*. This ensures transparency regarding the purpose and extent of revenue raised from 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

As discussed above, the mental health levy measure applies a levy on employers, or groups of employers, with annual Australian taxable wages over \$10 million. The imposition of the levy necessarily affects the right to property, because the employer is required to pay the levy in particular circumstances. While this will result in particular employers paying the levy, this is consistent with the overall policy objective.

Additionally, the designated group employer for a group may be required to provide for any shortfall for the group's liability for the levy in an annual or final return. However, this facilitates the collection of the amount of levy properly payable.

Employers are required to lodge with the Commissioner returns in relation to their liability for the levy. Those returns will require the provision of information about, amongst other things, the Australian taxable wages paid or payable by the employer for the period covered by the return.

Where an employer is a member of a group for payroll tax purposes, the employer's liability to pay the levy will depend on the annual Australian taxable wages of all other members in the group. Each employer in the group will therefore have to disclose information to facilitate the calculation of the thresholds at which the employer is liable to pay the levy.

While it may affect the right to privacy of the employer, these disclosures of information are critical to determining the employer's liability for the levy.

(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 mental health levy measure.

The Mental Health Select Committee (Committee) report – *Report No. 1, 57th Parliament – Inquiry into the opportunities to improve mental health outcomes for Queenslanders* – was tabled on 6 June 2022. In that report, the Committee recommended that a dedicated funding stream for mental health and alcohol and other drug services be created. Although the Committee did not specifically refer to a mental health levy imposed with reference to taxable wages for payroll tax purposes, the report did discuss a levy of this nature which is imposed under the Victorian *Payroll Tax Act 2007*.

The impact of the mental health levy measure on the right to property is on account of the requirement to pay the levy in certain circumstances. Any measure, whether or not legislated, which required particular persons to pay an amount to the State to fund the provision of mental health services would have some impact on the right to property for those persons. However, it is acknowledged that the mental health levy measure will result in a certain number of persons paying the levy, likely at a higher amount than would be payable if more people were required to pay. While only some employers may be subject to the levy, it does not give rise to an arbitrary deprivation of a person's property and there is a public interest in ensuring increased availability of State-funded mental health services.

The requirement for employers in a group to disclose certain confidential information is broadly consistent with existing disclosure requirements in relation to payroll tax administration. That is, like the current payroll tax framework where disclosure of certain information to the Commissioner is required for the imposition of payroll tax, disclosure of certain information by employers to the Commissioner is required to facilitate appropriate administration of the levy.

The Commissioner is subject to strict confidentiality provisions under the Taxation Administration Act, which generally prohibit disclosure except in specific limited circumstances and unauthorised disclosure of confidential information is an offence, which provides a general safeguard to protect personal information. The *Information Privacy Act 2009* and the Queensland Government information security policy also protect individuals' privacy.

To the extent that certain information will be required to be shared between employers in a group context, this is necessary because, as noted, the liability of a particular employer in a group for the levy depends on the total annual Australian taxable wages of all employers in the group. Determining liability on this basis is consistent with the current payroll tax framework, as a group's wages are relevant to determining each group member's liability for payroll tax.

Therefore, the provision of information to the Commissioner and any sharing of information between group members would not be an unlawful or arbitrary interference with a person's right to privacy.

Further, section 11 of the Human Rights Act provides that only individuals have human rights. When considering the impact that the mental health levy measure will have on individuals, it is relevant that most entities liable for the levy will be corporations rather than individuals. The mental health levy 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 mental health levy measure on an individual's property rights and right to privacy is outweighed by the benefits to the State and citizens that will be derived by ensuring that the State has ongoing sustainable funding available for critical elements of the State's mental health expenditure. In particular, it is in the public interest to promote State-based mental health services and increased availability to those services for the Queensland community.

In reaching this view, it is significant that the mental health levy 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 Revenue Legislation Amendment Bill 2022 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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