



# Betting Tax and Other Legislation Amendment Bill 2022

**Report No. 28, 57th Parliament**  
**Education, Employment and Training Committee**  
**November 2022**

## **Education, Employment and Training Committee**

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### **Acknowledgements**

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All web address references are current at the time of publishing.

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## Chair's foreword

On behalf of the Education, Employment and Training Committee, I present this report on the committee's examination of the Betting Tax and Other Legislation Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The primary objective of the Bill is to provide for a more sustainable funding model for Queensland's racing industry.

To inform its examination of the Bill, the committee called for – and received – written submissions from stakeholders, was briefed by officials from the Queensland Treasury and the Department of Education's Office of Racing, and held a public hearing on 24 October 2022.

On the basis of this evidence, the committee is satisfied that the Bill will achieve its policy objectives, does so in a manner that is consistent with fundamental legislative principles, and is compatible with human rights.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Queensland Treasury.

I commend this report to the House.



**Kim Richards MP**

**Chair**

## Recommendations

<b>Recommendation 1</b>	<b>3</b>
The committee recommends the Betting Tax and Other Legislation Amendment Bill 2022 be passed.	
<b>Recommendation 2</b>	<b>8</b>
That the Bill be amended to omit sections 25(3) and 26(2)(a) from the <i>Betting Tax Act 2018</i> to ensure that free bets made as totaliser bets are incorporated into the calculation of the betting tax.	
<b>Recommendation 3</b>	<b>11</b>
That the Treasurer and Minister for Trade and Investment clarify how ‘country thoroughbred race meetings’ will be defined for the purposes of the <i>Racing Act 2002</i> and the Racing Regulation 2013, and who will be responsible for defining this term.	

## Executive Summary

This report presents a summary of the Education, Employment and Training Committee's examination of the Betting Tax and Other Legislation Amendment Bill 2022 (the Bill).

The primary objective of the Bill is to provide a more sustainable funding model for Queensland's racing industry.

The Bill achieves its primary objective by:

- introducing a 5 per cent racing levy in addition to the 15 per cent betting tax rate
- incorporating free bets into the calculation of betting tax
- providing for the hypothecation of 80 per cent of annual betting tax revenue to the Racing Queensland Board (Racing Queensland).

The Bill also proposes changes intended to ensure that country thoroughbred race meetings in Queensland receive a minimum amount of the betting tax revenue paid to Racing Queensland.

A secondary objective of the Bill is to facilitate the implementation of the new mental health levy by further developing the administrative, machinery and transitional arrangements relating to the levy. The bulk of the changes necessary to implement the mental health levy have already been made in the *Revenue Legislation Amendment Act 2022*.

To achieve its objectives, the Bill proposes amendments to the *Betting Tax Act 2018* (Betting Tax Act), the *Racing Act 2002* (Racing Act), Racing Regulation 2013 (Racing Regulation), and the *Payroll Tax Act 1971* (Payroll Tax Act).

**The committee recommends** that the Bill be passed.

In making this recommendation, the committee has considered a range of factors relating to the Betting Tax Act, Racing Act and Racing Regulations. These include:

- the views of stakeholders who engaged with the inquiry, the majority of whom indicated support for the proposed changes
- the existing funding model for Racing Queensland, which no longer provides it with sufficient financial certainty
- the estimated \$80 million in additional revenue which the changes to the betting tax are expected to generate each year
- the ability of the proposed changes to provide Racing Queensland, and through it the racing industry, with a more certain source of revenue, which is expected to reach approximately \$198 million in the first full year of reform
- the potential impact of the changes to the betting tax on the gambling industry
- the ability of the proposed changes to provide an adequate and stable source of funding for country thoroughbred racing, which will receive at least \$20 million each year.

**The committee unanimously recommends** that the Bill be amended to omit sections 25(3) and 26(2)(a) from the Betting Tax Act to ensure that free bets made as totaliser bets are incorporated into the calculation of the betting tax. This amendment will ensure that free bets made as totaliser bets are not treated more favourably than free bets made as general bets. The Queensland Treasury supports this amendment, as do key stakeholders, Racing Queensland and Tabcorp.

**The committee recommends** that the Treasurer and Minister for Trade and Investment clarify how 'country thoroughbred race meetings' will be defined for the purposes of the Racing Act and the Racing Regulation, and who will be responsible for defining this term. Neither the Bill, the Racing Act,

nor the Racing Regulation provides a definition of ‘country thoroughbred race meetings’. The explanatory notes imply that Racing Queensland will have the power to determine which events fall within this category, but the Bill does not provide for this explicitly.

With respect to the proposed changes to the Payroll Tax Act, the committee received evidence that those changes:

- are designed to better align the mechanisms relating to the mental health levy with those relating to payroll tax
- address gaps in the framework that has already been legislated for the mental health levy. The Queensland Revenue Office identified these gaps as it prepared for the implementation of that levy.

As such, the committee is satisfied that the administrative burden imposed on businesses by the proposed changes is reasonable and proportionate.

The Bill will primarily affect corporate entities – not individuals. This limits the extent to which issues of fundamental legislative principle and human rights arise, since this only occurs where the rights and liberties of individuals are affected.

The committee considers that the Bill raises 4 issues relating to fundamental legislative principles and human rights:

- the retrospectivity of transitional arrangements for the betting tax
- the impact of the betting tax on the right to property
- the impact of information disclosure requirements relating to the mental health levy on the right to privacy
- the delegation of legislative power regarding the minimum amount of funding allocated for country thoroughbred race meetings and the rate at which it is indexed.

**The committee is satisfied** that sufficient regard has been had to fundamental legislative principles, and that any limitations of human rights are reasonable and justified.





# 1 Introduction

## 1.1 Policy objectives of the Bill

The primary objective of the Bill is to provide a more sustainable funding model for Queensland's racing industry.



The Bill achieves its primary objective by:

- introducing a 5 per cent racing levy in addition to the 15 per cent betting tax rate
- incorporating free bets – often called bonus bets – into the calculation of betting tax
- providing for the hypothecation of 80 per cent of annual betting tax revenue to the Racing Queensland Board (Racing Queensland).

The Bill also proposes changes intended to ensure that country thoroughbred race meetings in Queensland receive a minimum amount of the betting tax revenue paid to Racing Queensland.

A secondary objective of the Bill is to facilitate the implementation of the new mental health levy by further developing the administrative, machinery and transitional arrangements relating to the levy.

To achieve its objectives, the Bill proposes amendments to:

- the *Betting Tax Act 2018* (Betting Tax Act)
- the *Racing Act 2002* (Racing Act)
- the Racing Regulation 2013 (Racing Regulation)
- the *Payroll Tax Act 1971* (Payroll Tax Act).

## 1.2 Background

This Bill has been prepared in response to 2 distinct problems or developments:

- the existing funding model for Racing Queensland, which no longer provides it with sufficient certainty
- the Queensland Government's decision to impose a new mental health levy on large employers, to create a dedicated funding stream for mental health and alcohol and other drug services.

### 1.2.1 Existing funding model for Racing Queensland no longer provides sufficient certainty

Racing Queensland, established under the Racing Act, is the control body for 3 codes of racing: thoroughbred racing, harness racing, and greyhound racing.

At present, Racing Queensland has 2 main sources of revenue: wagering revenue, and grants and contributions.



Wagering revenue totalling almost \$221 million made up 61 per cent of Racing Queensland's consolidated revenue in 2021-2022. Payments from Tabcorp made up roughly half of this revenue.



Grants and contributions totalling \$107 million made up 30 per cent of Racing Queensland's consolidated revenue in 2021-2022. Most of this revenue was funding from the Queensland Government.<sup>1</sup>

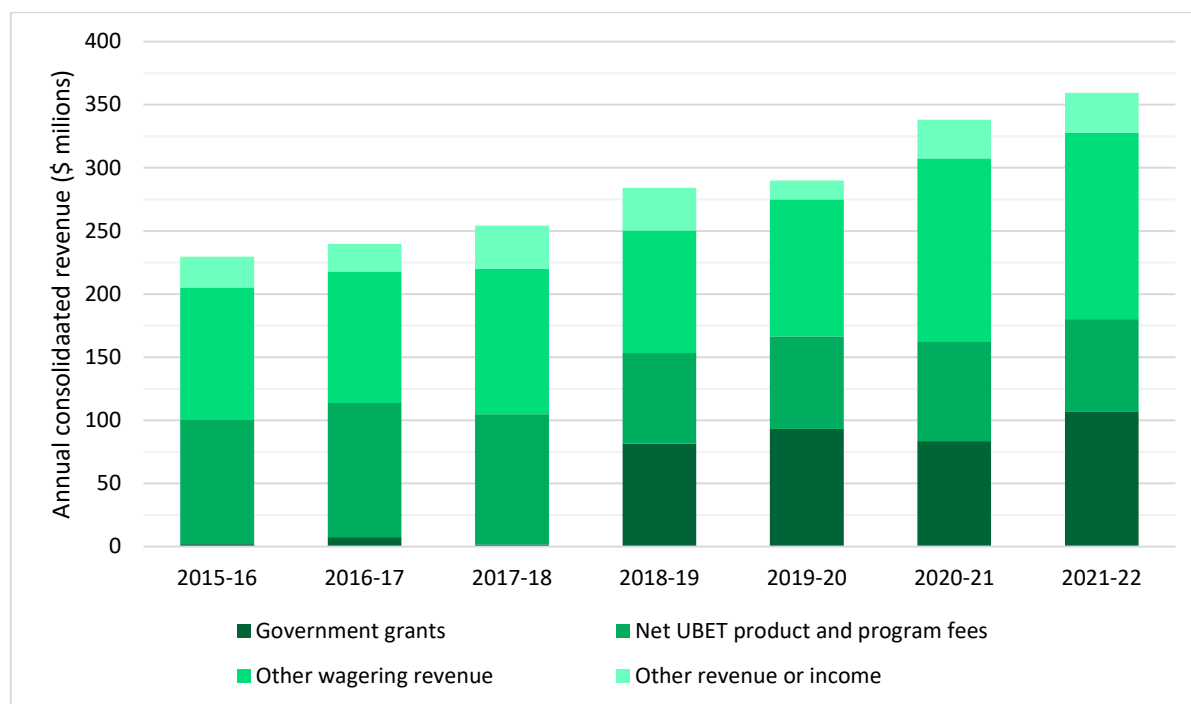
<sup>1</sup> Racing Queensland, *Annual Report 2021/2022*, 2022, pp 12, 57, and 64-65.

Racing Queensland's funding model no longer provides it with adequate financial certainty. This is due to several factors, including an overreliance on wagering revenue, in particular payments from Tabcorp, which have declined both due to the introduction of the betting tax, and because of competitive pressures facing Tabcorp.<sup>2</sup>

One of the competitive pressures affecting Tabcorp is the growth in foreign-owned Northern Territory-licensed online bookmakers. Tabcorp told the committee these operators, who now account for 75 per cent of Queensland's digital wagering market, are owned by parent companies domiciled in tax havens such as Dublin and the Isle of Mann to minimise their tax liability.<sup>3</sup> As these online bookmakers have expanded their market share, more of the profits from bets placed in Queensland have been sent offshore and the wagering revenue paid by Tabcorp to Racing Queensland as UBET product and program fees has declined, as illustrated in Figure 1.

Another reason why Racing Queensland's funding model no longer provides adequate financial certainty is the short-term nature of most of the schemes through which the Queensland Government provides funding to it.<sup>4</sup> As illustrated in Figure 1, under the existing funding model, Racing Queensland has become increasingly reliant on government funding as payments from Tabcorp have declined.

**Figure 1 Racing Queensland has become more reliant on government grants**



*Note: NET UBET product and program fees are payments made by Tabcorp to Racing Queensland under the Queensland Product and Program Deed.*

*Source: Racing Queensland Annual Reports 2015-16 to 2021-22.*

At present, the Queensland Government allocates 35 per cent of betting tax revenue to the racing industry,<sup>5</sup> but this amount is not guaranteed in legislation.

<sup>2</sup> Hon Cameron Dick MP, Treasurer and Minister for Trade and Investment, Queensland Parliament, Record of Proceedings, 12 October 2022, p 2,603.

<sup>3</sup> Public hearing transcript, Brisbane, 24 October 2022, pp 5-6.

<sup>4</sup> Hon Cameron Dick MP, Treasurer and Minister for Trade and Investment and Hon Grace Grace, Minister for Education, Minister for Industrial Relations and Minister for Racing, *Greater certainty for Queensland country racing*, Joint Statement, 6 June 2022.

<sup>5</sup> Queensland Government, *Budget Paper 2 - Budget Strategy and Outlook 2022-23*, June 2022, p 86.

The dated and complex nature of the legal arrangements between Tabcorp and Racing Queensland, which contributed to a legal dispute between them,<sup>6</sup> also reduces the financial certainty of the current funding model.

The new funding model set out in the Bill is designed to provide Racing Queensland with more certain and stable funding over the long-term.

### 1.2.2 The new mental health levy

The Legislative Assembly established the Mental Health Select Committee of the 57th Parliament on 2 December 2021 to inquire into opportunities to improve mental health outcomes for Queenslanders. The Mental Health Committee tabled its report on 6 June 2022.<sup>7</sup>

In its report, the Mental Health Committee made 57 recommendations. This included a recommendation that the Queensland Government create a dedicated funding stream for mental health and alcohol and other drug services. The report identified a levy on payroll tax as one way in which the Queensland Government might create such a funding stream.

In response, on 21 June 2022, the Treasurer and Minister for Trade and Investment, the Hon Cameron Dick MP, announced that the Queensland Government would create a mental health levy on large businesses, with the rate of the levy varying depending on the size of the business.

Large employers (those with annual Australian taxable wages over \$10 million) will pay 2.5 cents for every \$10 of taxable wages they pay over \$10 million. Very large businesses (those with annual Australian taxable wages over \$100 million) will pay 5 cents for every \$10 of taxable wages they pay over \$100 million.



The government estimates that the mental health levy will generate an additional \$183.8 million in revenue in the 2022-23 financial year, rising to \$425.4 million in the 2025-26 financial year.<sup>8</sup>

The bulk of the changes necessary to implement the mental health levy were made in the *Revenue Legislation Amendment Act 2022*.

However, in preparing for the implementation of the levy, which is due to commence on 1 January 2023, the Queensland Revenue Office (QRO) identified further amendments to the Payroll Tax Act that are necessary for an orderly transition to, and ongoing administration of, the levy.<sup>9</sup>

### 1.3 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

#### Recommendation 1

The committee recommends the Betting Tax and Other Legislation Amendment Bill 2022 be passed.

<sup>6</sup> Hon Cameron Dick MP, Treasurer and Minister for Trade and Investment, Queensland Parliament – Economic and Governance Committee, Record of Proceedings, 26 July 2022, pp 74-5.

<sup>7</sup> Mental Health Select Committee, *Inquiry into the opportunities to improve mental health outcomes for Queenslanders*, Report No. 1, 57th Parliament, June 2022.

<sup>8</sup> Queensland Government, *Budget Paper 4 – Budget Measures 2022-23*, June 2022, p 165.

<sup>9</sup> Explanatory notes, p 2.

## 2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

### 2.1 Proposed changes to the Betting Tax Act



The betting tax applies to wagers placed by people in Queensland, including bets on racing and sporting matches. It does not apply to casino games, keno, lotteries or the pokies, which are subject to other taxes.<sup>10</sup>

The Bill proposes 3 main changes to the Betting Tax Act.

First, the Bill proposes the creation of a 5 per cent racing levy, which will effectively raise the rate of the betting tax from 15 to 20 per cent. The Bill does this by amending sch 1 (Dictionary) of the Betting Tax Act to provide that:

- the rate of the racing levy is 5 per cent
- the taxing rate of the betting tax includes the racing levy, in addition to the default rate of 15 per cent (which applies if no other amount is prescribed by regulation).<sup>11</sup>

Second, the Bill proposes including free bets (sometimes referred to as bonus bets) in the calculation of taxable wagering revenue. It does this by:

- deleting the existing s 28(2) of the Betting Tax Act,<sup>12</sup> which currently excludes free bets made as general bets from the amounts used to calculate taxable wagering revenue
- amending s 29(2) of the Betting Tax Act to provide that the monetary value of a free bet is included in the amount of a bet generally.<sup>13</sup>

Third, the Bill introduces a requirement that the Queensland Treasury pay 80 per cent of annual betting tax revenue to Racing Queensland. The Bill does this by inserting a new Part 6A (Payments to Racing Queensland Board) in the Betting Tax Act.<sup>14</sup>

This new Part 6A will require the Treasurer to pay Racing Queensland an amount equivalent to 80 per cent of betting tax revenue for each financial year in quarterly instalments.<sup>15</sup> These payments must be paid as soon as practicable after the end of each quarter, and may be based on an estimate of betting tax revenue for the relevant financial year.<sup>16</sup> The proposed Part 6A provides for adjustments to be made where Racing Queensland is overpaid or underpaid in a financial year.<sup>17</sup>

As these changes will come into effect part-way through the current financial year (on 1 December 2022), the Bill also proposes amendments to the Betting Tax Act to provide transitional arrangements for the 2022-23 financial year.

A majority of submitters supported the proposed changes to the Betting Tax Act.

<sup>10</sup> Betting Tax Act, s 6.

<sup>11</sup> Clause 11.

<sup>12</sup> Clause 5.

<sup>13</sup> Clause 6.

<sup>14</sup> Clause 7.

<sup>15</sup> Proposed s 59B(1) and (2).

<sup>16</sup> Proposed s 59B(3).

<sup>17</sup> Proposed s 59B(4).

### 2.1.1 How much additional revenue will the changes to the betting tax generate?

In 2021-22, the betting tax generated roughly \$160 million in revenue.<sup>18</sup> The Bill will increase this amount by introducing the racing levy and incorporating free bets in the calculation of betting tax.

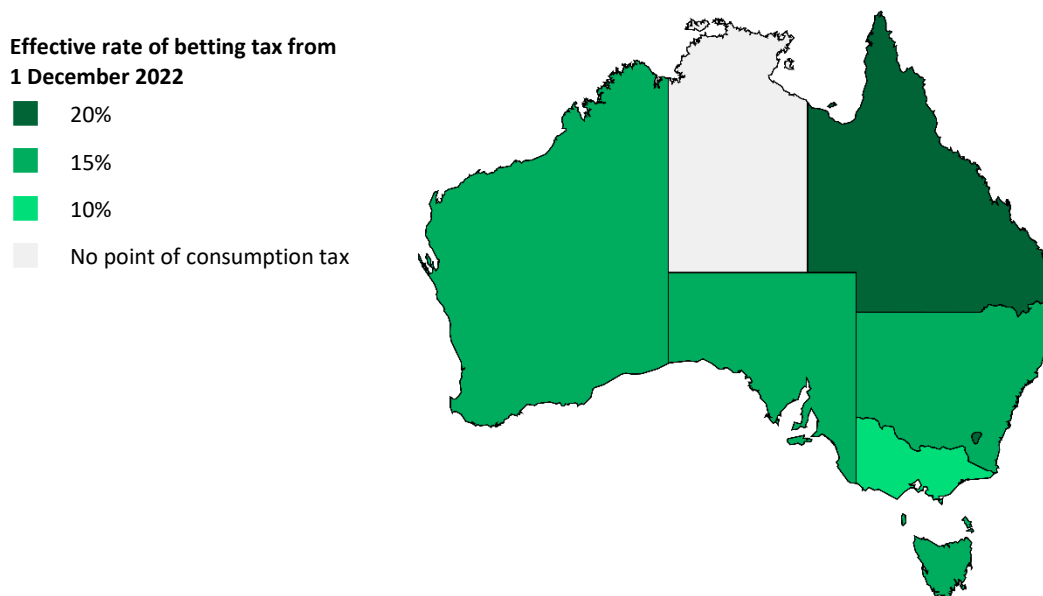


Queensland Treasury estimates that the proposed changes to the Betting Tax Act will generate \$80 million in additional revenue each year. This includes \$50 million from the introduction of the racing levy, and \$30 million from the incorporation of free bets into the calculation of the betting tax.<sup>19</sup>

Some stakeholders suggested that the introduction of the racing levy could have unintended side-effects, some of which may reduce the amount of revenue it generates. Mr Justin Madden, CEO of Responsible Wagering Australia (RWA), a peak body that represents Australian-licensed online gambling providers, stated that the amount of revenue generated by the changes is likely to be less than estimated by Queensland Treasury because many betting operators will take cost mitigation measures.<sup>20</sup>

Mr Madden also stated that betting operators may deprioritise Queensland events on their platforms, encouraging customers to place bets on events in jurisdictions where the rate of betting tax will be lower.<sup>21</sup> As illustrated in Figure 2, the changes proposed in the Bill will mean that, from 1 December 2022, Queensland will join the Australian Capital Territory (ACT) in having the highest rate of betting tax in the country. The ACT increased the rate of betting tax from 15 to 20 per cent on 1 July 2022.<sup>22</sup>

**Figure 2 Queensland and the ACT will have the highest rate of betting tax in Australia**



Source: Aussie Fair Play Coalition and relevant legislation.<sup>23</sup>

<sup>18</sup> Queensland Government, *Budget Paper 2 – Budget Strategy and Outlook 2022–23*, June 2022 p 89.

<sup>19</sup> Mr Drew Ellem, Head of Strategic Policy, Queensland Treasury, public briefing transcript, Brisbane, 24 October 2022, p 2.

<sup>20</sup> Public hearing transcript, Brisbane, 24 October 2022, p 8.

<sup>21</sup> Public hearing transcript, Brisbane, 24 October 2022, p 2.

<sup>22</sup> Taxation Administration (Betting Operations Tax – Rate) Determination 2022 (ACT).

<sup>23</sup> Aussie Fair Play Coalition, *Get the facts*, <https://www.fairplaycoalition.com.au/facts>; Taxation Administration (Betting Operations Tax – Rate) Determination 2022 (ACT). Figure created using mapchart.net.

During the public hearing, representatives of both RWA and Racing Queensland advised the committee that some betting operators had deprioritised Queensland events following the Queensland Government’s announcement of changes to the betting tax.<sup>24</sup> Mr Brendan Parnell, the CEO of Racing Queensland explained that while this did not reduce betting tax revenues (since the tax is based on the location of the person placing the bet, not the event they are betting on) it did reduce the wagering revenue (i.e. product fees) received by Racing Queensland.<sup>25</sup>

### 2.1.2 Will these changes improve the financial sustainability of Queensland’s racing industry?

As discussed in section 1.2.1, above, the existing funding model for Racing Queensland does not provide adequate financial sustainability. The amendments to the Betting Tax Act are designed to provide Racing Queensland with a more certain and stable source of funding, and thus to improve the financial sustainability of the racing industry.



Queensland Treasury estimates that these changes will result in Racing Queensland receiving approximately \$198 million in hypothecated betting tax revenue in 2022-23, the first full year of reform.<sup>26</sup>

The hypothecated betting tax will replace both the UBET product and program fees currently paid by Tabcorp, and the existing government funding. Most stakeholders who engaged with the committee expressed the view that these changes would improve the financial sustainability of Queensland’s racing industry. Several stakeholders from within the racing industry explained their support for the Bill on this basis.<sup>27</sup> For example, the Gold Coast Turf Club submitted that by increasing the amount of wagering turnover that flows to racing clubs, the Bill will significantly increase their financial sustainability.<sup>28</sup>

Racing Queensland also expressed support for the funding model proposed in the Bill. It stated that the proposed changes will ‘enable the racing industry in Queensland to benefit directly from what it creates.’<sup>29</sup> At the public hearing, Mr Brendan Parnell, the CEO of Racing Queensland, explained why it saw the new funding model as beneficial:

Certainty of funding is critically important for our industry to thrive and is the basis upon which we can create long-term strategies which will grow the industry and can be developed and implemented.<sup>30</sup>

Later, he elaborated:

This will give us an opportunity—instead of coming to government every two years for renewals of three different funding agreements, we will have the long-term certainty to be able to provide an investment program for our clubs for infrastructure and major events. So instead of looking just over the horizon, we will be able to give Queensland a plan for the next decade.<sup>31</sup>

### **Committee comment**

The committee is satisfied that the proposed changes to the Betting Tax Act will improve the financial sustainability of Queensland’s racing industry.

<sup>24</sup> Public hearing transcript, Brisbane, 24 October 2022, pp 2, 8.

<sup>25</sup> Public hearing transcript, Brisbane, 24 October 2022, p 2.

<sup>26</sup> Mr Drew Ellem, Head of Strategic Policy, Queensland Treasury, public briefing transcript, Brisbane, 24 October 2022, p 2.

<sup>27</sup> See submissions 3-7.

<sup>28</sup> Submission 4.

<sup>29</sup> Racing Queensland, submission 5, p 1.

<sup>30</sup> Public hearing transcript, Brisbane, 24 October 2022, p 1.

<sup>31</sup> Public hearing transcript, Brisbane, 24 October 2022, p 3.

### 2.1.3 How will these changes impact the gambling industry?

Stakeholders expressed divergent views about the impact of the proposed changes on the gambling industry.

Some stakeholders expressed the view that the changes to the Betting Tax Act would ‘level the playing field’ by requiring all gambling providers to contribute funding for the racing industry at the same rate. This view was expressed most strongly by Tabcorp, which stated that, under the current funding model for Racing Queensland, it contributes a greater proportion of each bet placed to the racing industry than other gambling providers.<sup>32</sup> During the public hearing, Mr Adam Rytenskild, Managing Director and CEO of Tabcorp, stated:

... we have been fighting with one arm tied behind our back because in round terms we pay double. Every dollar bet with us, we pay double in racing industry fees effectively than all of our competitors do.<sup>33</sup>

In contrast, representatives from RWA and BetGold expressed concern that the Bill would have an adverse effect on the gambling industry.<sup>34</sup> They noted the potential for the changes to:

- discourage gambling providers from expanding their businesses
- undermine the ability of Australian-licensed gambling providers to invest in improving their products and customer service
- make illegal online gambling sites based overseas more appealing to Australian consumers.

### 2.1.4 Additional changes proposed by stakeholders

Three stakeholders proposed additional changes to the Betting Tax Act.

Both Racing Queensland and Tabcorp proposed further broadening the base of the betting tax to include free bets that are placed as totaliser bets in the calculation of taxable wagering revenue.<sup>35</sup> This could be achieved by omitting s 26(2)(a) of the Betting Tax Act as well as s 25(3), which refers to s 26(2)(a). This change would be consistent with the intent, stated in the explanatory notes, to ‘incorporate free bets into the calculation of betting tax’.<sup>36</sup>



Section 26(2)(a) of the Betting Tax Act allows betting operators to deduct any amounts they pay into a totaliser pool on account of a free bet from their taxable wagering revenue. If this provision were to remain, free bets made as totaliser bets would receive more favourable treatment than those made as general bets, where a similar deduction is not available.<sup>37</sup>

In light of the above, Queensland Treasury has proposed that amendments be introduced to omit ss 25(3) and 26(2)(a) of the Betting Tax Act.

Racing Queensland also proposed removing the ability to change the rate of the betting tax via regulation, so that the rate could only be changed by amending the Betting Tax Act.<sup>38</sup> Racing Queensland submitted that this would further increase certainty about the amount of funding that it will receive each year.

<sup>32</sup> Submission 8.

<sup>33</sup> Public hearing transcript, Brisbane, 24 October 2022, p 6.

<sup>34</sup> Public hearing transcript, Brisbane, 24 October 2022, pp 9 and 12.

<sup>35</sup> Submissions 5 and 8.

<sup>36</sup> Explanatory notes, p 1.

<sup>37</sup> Queensland Treasury, correspondence, 26 October 2022, p 1.

<sup>38</sup> Submission 5.



BetGold proposed increasing the threshold level of annual taxable wagering revenue at which betting operators must register to pay betting tax to better align with other jurisdictions.<sup>39</sup> This threshold is currently \$300,000 in Queensland, but in some jurisdictions it is higher. In both New South Wales and Victoria it is currently \$1 million, while in South Australia, Western Australia, Tasmania and the ACT it is \$150,000.<sup>40</sup>

BetGold also proposed that allowances be made for losing months to be carried forward and aggregated in profitable months. Queensland Treasury advised the committee that the ability to carry forward losses to offset wagering revenue in future periods is not currently a feature of the betting tax framework and the Bill does not propose to make any changes in this regard. Queensland Treasury also noted that the Bill does not propose to make any changes to the tax-free threshold in Queensland.<sup>41</sup>

### **Committee comment**

The committee unanimously agrees with Queensland Treasury that it would be preferable to amend the Betting Tax Act to ensure that free bets made as totaliser bets are not treated more favourably than those made as general bets. The committee therefore unanimously recommends that the Bill be amended to omit ss 25(3) and 26(2)(a) from the Betting Tax Act to ensure that free bets made as totaliser bets are incorporated into the calculation of the betting tax.

The committee is satisfied that the other changes to the Betting Tax Act proposed by stakeholders are unnecessary.

### **Recommendation 2**

That the Bill be amended to omit sections 25(3) and 26(2)(a) from the *Betting Tax Act 2018* to ensure that free bets made as totaliser bets are incorporated into the calculation of the betting tax.

## **2.2 Proposed changes to the Racing Act and Racing Regulations**

The Bill proposes several changes to the Racing Act and Racing Regulations. These changes are designed to provide more secure and stable funding for country thoroughbred racing.

To that end the Bill proposes:

- removing s 12 from the Racing Act, which requires Racing Queensland to pay a portion of the UBET product fee (which will no longer exist) as prize money for country thoroughbred races<sup>42</sup>
- inserting a new s 12 into the Racing Act, which will require Racing Queensland to spend a prescribed minimum amount on country thoroughbred racing each financial year that it receives in hypothecated betting tax revenue<sup>43</sup>
- amending the Racing Regulation to prescribe that amount as \$20 million, to be indexed annually at 2 per cent (unless a different rate is prescribed by regulation)<sup>44</sup>
- inserting a new s44A in the Racing Act, requiring Racing Queensland to include details of country thoroughbred race meetings, and amounts spent on them, in its annual report<sup>45</sup>

<sup>39</sup> Submission 2.

<sup>40</sup> Queensland Treasury, correspondence, 26 October 2022, p 1.

<sup>41</sup> Queensland Treasury, correspondence, 26 October 2022, p 1.

<sup>42</sup> Clause 71.

<sup>43</sup> Clause 71.

<sup>44</sup> Clause 77.

<sup>45</sup> Clause 73.




- amending s 84 of the Racing Act to require Racing Queensland to include details of country thoroughbred race meetings in the racing calendar it must prepare each year.<sup>46</sup>

The Bill also proposes changes to the Racing Act and Racing Regulation to provide transitional arrangements for the 2022-23 financial year.<sup>47</sup>

### 2.2.1 Will the proposed changes provide adequate funding for country thoroughbred racing?

In the last financial year, Racing Queensland spent approximately \$21 million on country thoroughbred racing.<sup>48</sup> Since 2018, most of this expenditure has been funded by the Queensland Government's Country Racing Program.

The Country Racing Program is due to end in the next financial year. The new obligation for Racing Queensland to spend at least \$20 million of hypothecated betting tax revenue on country thoroughbred racing will replace that program.



The Country Racing Program currently provides:

- \$15 million a year to support country racing prize money, clubs, jockey riding fees, superannuation, WorkCover expenses, club meeting payments, Queensland Racing Integrity Commission costs and Racing Queensland administration costs
- \$2.6 million a year for country racing club infrastructure repairs and maintenance and asset replenishment.<sup>49</sup>

During the public hearing, both the Queensland Treasury and Racing Queensland stated that the \$20 million that will be earmarked for country thoroughbred racing is a minimum guarantee, not a maximum amount.<sup>50</sup> Noting the importance of country racing to the community, Mr Parnell, CEO of Racing Queensland, stated that it would continue investing in country thoroughbred racing, and is likely to spend more than the required minimum on it each year.<sup>51</sup>

Officers from Queensland Treasury noted that both the \$20 million minimum, and the annual indexation rate of 2 per cent, had been prescribed in the Racing Regulation, rather than the Racing Act, to ensure they 'can be reconsidered more easily and quickly' if circumstances change.<sup>52</sup>

#### Committee comment

The committee notes that Racing Queensland is satisfied that the Bill will provide an acceptable minimum level of funding for country thoroughbred racing.

### 2.2.2 Is the definition of 'country thoroughbred race meetings' sufficiently clear?

As noted above, the Bill will impose new obligations on Racing Queensland in relation to country thoroughbred race meetings, including an obligation to spend at least \$20 million a year on such events. However, it is unclear how these events will be defined.

Neither the Bill, the Racing Act, nor the Racing Regulation provides a definition of 'country thoroughbred race meetings'. The explanatory notes imply that Racing Queensland will have the

<sup>46</sup> Clause 74.

<sup>47</sup> Clauses 75 and 77.

<sup>48</sup> Mr Michael Duff, Acting Director, Office of Racing, Department of Education, public briefing transcript, Brisbane, Brisbane, p 4.

<sup>49</sup> Racing Queensland, *Annual Report 2021/22*, 2022, p 65.

<sup>50</sup> Mr Michael Duff, Acting Director, Office of Racing, Department of Education, public briefing transcript, Brisbane, 24 October 2022, p 4.

<sup>51</sup> Public hearing transcript, Brisbane, 24 October 2022, p 2.

<sup>52</sup> Mr Michael Duff, Acting Director, Office of Racing, Department of Education, public briefing transcript, Brisbane, 24 October 2022, p 4.

power to determine which events fall within this category, but the Bill does not provide for this explicitly.

In the past, country thoroughbred racing has been understood to refer both to race meetings held outside of urban areas, and to non-TAB race meetings (i.e. meetings at which Tabcorp does not offer wagering). For example, in a recent annual report, Racing Queensland defined 'Country Racing' as follows:

Areas outside of Metropolitan and Provincial. For thoroughbred racing this can also refer to non-TAB racing.<sup>53</sup>

However, during the public briefing, Mr Michael Duff (Acting Director in the Office of Racing, Department of Education) advised the committee that technological developments have blurred the distinction between TAB and non-TAB racing, such that the latter is no longer synonymous with country thoroughbred racing. Racing Queensland noted several prominent country racing events at which TAB now offers wagering, including the Birdsville Races.<sup>54</sup>

Mr Duff explained that Racing Queensland now:

... envisage country racing [clubs] as being that they are members of the country racing associations in their region. That would previously have been just the non-TAB clubs, but going forward it will be those clubs that are part of the country racing associations.<sup>55</sup>

In its discussion of fundamental legislative principles, the explanatory notes imply that Racing Queensland will be responsible for determining which events are country thoroughbred race meetings. It states:

The amendments also provide that Racing Queensland identify country thoroughbred race meetings through its racing calendar under section 84 of the Racing Act... The determination of country thoroughbred race meetings by Racing Queensland via the racing calendar enables certainty in the identification of country race meetings annually. Racing Queensland is established through the Racing Act, and its functions and powers are subject to the Act. As the primary function of Racing Queensland is to manage codes of racing, including thoroughbred racing, it is the appropriate entity to determine what constitutes country racing.... As the definition of a country race may change over time (e.g. due to shifts in broadcast and wagering technology), it is necessary to have a degree of flexibility in relation to the definition.<sup>56</sup>

This approach would give Racing Queensland substantial discretion to determine which events are country thoroughbred race meetings, and thus are eligible to share in the \$20 million guaranteed for such events each year. That discretion would, however, be limited by the power of the Minister for Racing to give Racing Queensland a direction under s 44 of the Racing Act.

At present, the Bill itself does not explicitly provide for Racing Queensland to determine what constitutes country racing: it merely imposes an obligation on Racing Queensland to prepare an annual racing calendar that includes details of the country thoroughbred race meetings to be held in the relevant period.<sup>57</sup> As such, it is unclear whether the Queensland Government does in fact intend to leave the definition of country thoroughbred racing in the hands of Racing Queensland.

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<sup>53</sup> Racing Queensland, *Annual Report 2019/20*, 2020, p 38.

<sup>54</sup> Public briefing transcript, Brisbane, 24 October 2022, pp 4-5.

<sup>55</sup> Public briefing transcript, Brisbane, 24 October 2022, p 4.

<sup>56</sup> Explanatory notes pp 10-11.

<sup>57</sup> Clause 74.

### **Committee comment**

It is unclear to the committee how ‘country thoroughbred race meetings’ will be defined under the amended Racing Act and Racing Regulations, and who will be responsible for defining this term. The proposed changes to the Racing Act will require Racing Queensland to spend a minimum amount on country thoroughbred race meetings, but appear to give Racing Queensland substantial discretion to determine which race meetings fall within this category. Although the Minister will retain a power to give a direction to Racing Queensland, this could undermine the Queensland Government’s ability to hold Racing Queensland to account for how the funding earmarked for country thoroughbred race meetings is spent. It could also lead to disagreements between racing clubs and Racing Queensland about which race meetings should be eligible for that funding.

However, there may be good reasons to give Racing Queensland the discretion to determine what constitutes country thoroughbred racing. Racing Queensland is well placed to make this determination and, as the explanatory notes point out, a degree of flexibility is necessary as the definition of country thoroughbred racing may shift over time.

The committee therefore recommends that the Minister clarify how ‘country thoroughbred race meetings’ will be defined for the purposes of the Racing Act and Racing Regulations, and who will be responsible for defining this term.

### **Recommendation 3**

That the Treasurer and Minister for Trade and Investment clarify how ‘country thoroughbred race meetings’ will be defined for the purposes of the *Racing Act 2002* and the Racing Regulation 2013, and who will be responsible for defining this term.

## **2.3 Proposed changes to the Payroll Tax Act**

Part 3 of the Bill proposes changes to the Payroll Tax Act. None of the proposed changes alter the key features of the mental health levy, such as the rates or the thresholds at which they will apply.<sup>58</sup>

Broadly speaking, the proposed changes to the Payroll Tax Act:

- are designed to better align the mechanisms relating to the mental health levy with those relating to payroll tax
- address gaps in the framework that has already been legislated for the mental health levy, which QRO have identified as they prepare for the implementation of that levy.

Key changes proposed by the Bill include:

- the replacement of s 43E and the insertion of a new s 77A to provide for how periodic thresholds will be determined and what will happen to those thresholds if the Commissioner of State Revenue (the Commissioner) forms the view that an employer’s estimates of taxable wages or interstate wages are inappropriate or unreasonable<sup>59</sup>
- the amendment of s 43F to clarify that there is no periodic liability for the mental health levy for the last period return period of a financial year, mirroring the approach taken for payroll tax<sup>60</sup>
- the amendment of ss 43I and 43J to ensure that taxable wages and interstate wages that have previously been reflected in a final return lodged in a financial year are not included in the

<sup>58</sup> Explanatory notes, p 4.

<sup>59</sup> Clauses 37 and 50.

<sup>60</sup> Clause 38.

annual calculation of mental health levy (i.e. are not taxed twice), regardless of who paid the wages or lodged the final return<sup>61</sup>

- the insertion of new ss 88A-88E and s89A to facilitate, and in some cases require, the sharing of specified information between employers who are members of a group and the Commissioner<sup>62</sup>
- the amendment of s 12A to clarify that it is only the mental health levy itself which must be used for purposes related to mental health, not amounts associated with the levy such as unpaid interest on overdue payments<sup>63</sup>
- the amendment of numerous existing provisions, and the insertion of some new provisions, to ensure that, as much as possible (and subject to some exceptions), the mental health levy is administered on the same basis as payroll tax.<sup>64</sup> Where new provisions relating to the mental health levy have been inserted, they have been based on equivalent provisions that apply in relation to payroll tax<sup>65</sup>
- the amendment of ss 90 and 93 to create new offences and penalties relating to the mental health levy that mirror existing offences relating to payroll tax.<sup>66</sup>

As the amendments will commence on 1 January 2023, part way through the financial year, the Bill also inserts a new Part 16 in the Payroll Tax Act to provide transitional arrangements for the 2022-23 financial year.<sup>67</sup>

None of the submissions received by the committee addressed the proposed changes to the Payroll Tax Act.

### **2.3.1 Is the administrative burden imposed on businesses by the proposed changes reasonable and proportionate?**

During the public briefing, representatives from the Queensland Treasury advised the committee that the proposed changes had been designed to reduce the administrative burden associated with the mental health levy as much as possible. They stated:

... the intention was to overlay the mental health levy as much as possible over the existing payroll tax framework. That is obviously to reduce the administrative burden on businesses in having to deal with multiple tax regimes. [For example] All existing exemptions for payroll tax, not just the Country Women's [Association], also apply to the mental health levy.<sup>68</sup>

#### **Committee comment**

The committee is satisfied that administrative burden imposed on businesses by the proposed changes to the Payroll Tax Act is reasonable and proportionate given the policy objective of the new mental health levy.

<sup>61</sup> Clause 40.

<sup>62</sup> Clauses 63 and 64.

<sup>63</sup> Clause 18.

<sup>64</sup> Including cls 14-17, 19-30, 46-49. 61-62, 66, 56, 58, 60, and 66.

<sup>65</sup> For example cls 56, 58, and 60.

<sup>66</sup> Clauses 65 and 67.

<sup>67</sup> Clause 68.

<sup>68</sup> Ms Melinda Kross, Chief Revenue Counsel, Queensland Treasury, public briefing transcript, Brisbane, 24 October 2022, p 4.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

This Bill will primarily affect corporate entities – not individuals. Fundamental legislative principles apply only to the rights and liberties of individuals.

The following section examines only those aspects of the Bill likely to impact the rights and liberties of individuals.

The government position, as set out in the explanatory notes, is that the Bill is generally consistent with fundamental legislative principles.

The committee considers that the Bill raises 3 issues relating to fundamental legislative principles:

- the retrospectivity of transitional arrangements for the betting tax
- the impact of information disclosure requirements relating to the mental health levy on the right to privacy
- the delegation of legislative power regarding the minimum amount of funding allocated for country thoroughbred race meetings and the rate at which it is indexed.

#### **Committee comment**

The committee is satisfied that sufficient regard has been given to fundamental legislative principles with respect to these three issues.

The committee brings the following to the attention of the Legislative Assembly.

##### **3.1.1 Rights and liberties of individuals**

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

The Bill raises the following issues relating to the rights and liberties of individuals.

##### **3.1.1.1 Retrospectivity of transitional arrangements for the betting tax**

While most entities liable to pay betting tax are corporations, a small number of individuals pay betting tax.<sup>69</sup>

The transitional taxing rate for the betting tax<sup>70</sup> could be seen as retrospectively changing the taxing rate prior to 1 December 2022. Betting operators will become liable to pay betting tax at the rate of 17.9 per cent for the first five months of 2022-23, rather than at the current rate of 15 per cent. However, they will also benefit from being liable at the rate of 17.9 per cent, rather than 20 per cent, for the remainder of that financial year.

This approach mirrors that taken in 2019, when the petroleum royalty rate was increased.

<sup>69</sup> Queensland Treasury, correspondence, 27 October 2022, p 1.

<sup>70</sup> Introduced by cl 10.

### **Committee comment**

The committee is satisfied that the transitional arrangements for the betting tax are justified and appropriate given that the additional retrospective tax liability imposed on betting operators in the period from 1 July 2022 to 30 November 2022 will be offset by an effective discount on the betting tax rate in the period from 1 December 2022 to 30 June 2023.

#### **3.1.1.2 Impact of information disclosure requirements relating to the mental health levy on the right to privacy**

New ss 88A to 88E of the Payroll Tax Act<sup>71</sup> will require the designated group employer (DGE) and non-DGE group members to provide certain information to each other. The Commissioner will also be authorised to provide certain information to the DGE.

These provisions have the potential to impact an individual's right to privacy by requiring, or in some cases authorising, the disclosure of personal information. The information required, or authorised, to be disclosed is limited to information necessary to determine mental health levy liability and administer the framework, including:

- 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
- the non-DGE group member's name and Australian Business Number (ABN).

Any impact on the right to privacy should be minimal, as the information required to be disclosed will generally not include personal information. Safeguards such as the confidentiality provisions in the *Taxation Administration Act 2001* and the *Information Privacy Act 2009* will also protect individuals' privacy.

### **Committee comment**

In light of the limited scope of the information which will be disclosed, and the existing safeguards that protect individuals' privacy, the committee is satisfied that the information sharing requirements relating to the mental health levy have sufficient regard to the rights and liberties of individuals.

#### **3.1.2 Institution of Parliament**

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament. The Bill raises the following issues relating to the institution of Parliament.

##### **3.1.2.1 Delegation of legislative power – minimum amount of funding for country thoroughbred racing and rate of indexation**

The new s 12 of the Racing Act<sup>72</sup> will require Racing Queensland to spend a minimum amount of the betting tax revenue that it receives on country thoroughbred race meetings. That minimum amount, and the rate at which it will be indexed each year, is to be prescribed by regulation.

Clause 77 amends the Racing Regulation to prescribe the minimum amount for the period from 1 December 2022 to 30 June 2023 as \$20 million, the annual rate of indexation as 2 per cent.

### **Committee comment**

The committee is satisfied that there is a sufficient level of parliamentary oversight and scrutiny in relation to prescribing the minimum amount of funding for country thoroughbred racing and its rate of indexation.

<sup>71</sup> Inserted by cl 63.

<sup>72</sup> Inserted by cl 71.

### **3.2 Explanatory notes**

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

#### **Committee comment**

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

## 4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.<sup>73</sup>

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.<sup>74</sup>

The HRA protects fundamental human rights drawn from international human rights law.<sup>75</sup> Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

This Bill will primarily affect corporate entities – not individuals. Only individuals are entitled to the enjoyment of human rights.<sup>76</sup>

The following section examines only those aspects of the Bill likely to impact the rights of individuals of individuals.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

### 4.1 Human rights compatibility

The position of the Queensland Government is that the Bill is compatible with the human rights protected by the HRA.

The committee considers that the Bill raises the following issues of human rights:

- the right to property, which is potentially limited by both the introduction of the racing levy and the incorporation of free bets into the calculation of betting tax
- the right to privacy, which is potentially limited by the information disclosure requirements relating to the mental health levy.

#### **Committee comment**

The committee is satisfied that the potential limitations on the right to property and the right to privacy are reasonable and justifiable in a free and democratic society.

#### 4.1.1 The right to property

The HRA guarantees the right of all persons to own property and protects them against arbitrary interference with their property.<sup>77</sup> The Bill potentially limits this right by introducing the 5 per cent racing levy and incorporating free bets into the calculation of betting tax.

<sup>73</sup> HRA, s 39.

<sup>74</sup> HRA, s 8.

<sup>75</sup> The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

<sup>76</sup> HRA, s 11.

<sup>77</sup> HRA, s 24.



While most entities liable to pay betting tax are corporations, a small number of individuals pay betting tax.<sup>78</sup>

Taxation measures are usually only considered to constitute a violation of the right to property if:

- the amount of the tax is excessive relative to the benefit gained, and/or
- the process through which the tax is calculated and administered lack procedural fairness.

In this case, the amount of the tax increase appears reasonable when considered against its stated purpose: providing a sustainable funding model for the Queensland racing industry. The racing industry generates economic and social benefits for communities across the state, including benefits for betting operators themselves.

The existing processes through which betting tax is calculated and administered provide procedural fairness, and will not be amended by the Bill.

There is no apparent less-restrictive means to achieve the purpose of the Bill. Although the Queensland Government could seek an alternative source of revenue, it would likely have a similar impact on the right to property.

#### **Committee comment**

To the extent that the changes to the Betting Tax Act affect individuals, the impact on their right to property is relatively minor. It is also linked to a purpose that is likely to be seen as beneficial by many within the community.

In light of these factors, the committee is satisfied that the limitation is reasonable and justifiable in a free and democratic society.

#### **4.1.2 The right to privacy**

The HRA guarantees individuals the right not to have their privacy unlawfully or arbitrarily interfered with.<sup>79</sup> The Bill potentially limits this right by requiring, or in some cases authorising, the disclosure of certain information.

The information required, or authorised, to be disclosed is limited to information necessary to determine mental health levy liability and administer the framework, including:

- 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
- the non-DGE group member's name and ABN.

The relevant provisions are intended to help facilitate the efficient, effective, and accurate administrative of the mental health levy. This will contribute to the overarching objective of that levy, which is to provide funding for mental health services in Queensland.

#### **Committee comment**

Any impact on the right to privacy should be minimal, as the information required to be disclosed will generally not include personal information. Safeguards such as the confidentiality provisions in the *Taxation Administration Act 2001* and the *Information Privacy Act 2009* will also protect individuals' privacy. As such, it appears that there is no less restrictive way of achieving the purpose of the relevant provision.

<sup>78</sup> Queensland Treasury, correspondence, 27 October 2022, p 1.

<sup>79</sup> HRA, s 25.

In light of the limited scope of the information which will be disclosed, the existing safeguards that protect individuals' privacy, and the objective of the relevant provisions, the committee is satisfied that the potential limitation of the right to privacy is reasonable and justifiable in a free and democratic society.

#### **4.2 Statement of compatibility**

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

##### **Committee comment**

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

## Appendix A – Submitters

Sub #	Submitter
001	Mr Ken O'Dowd
002	BetGold Racing & Sports
003	Redcliffe Peninsula Harness Racing and Sporting Club
004	Gold Coast Turf Club
005	Racing Queensland Board
006	Harness Racing Australia
007	Australian Trainers' Association
008	Tabcorp Holdings Ltd
009	Queensland Hotels Association

## **Appendix B – Officials at public departmental briefing**

### **Queensland Treasury**

- Ms Melinda Kross, Chief Revenue Counsel
- Mr Drew Ellem, Head of Strategic Policy

### **Department of Education**

- Mr Michael Duff, A/Director, Office of Racing

## **Appendix C – Witnesses at public hearing**

### **Racing Queensland**

- Mr Brendan Parnell, CEO

### **Tabcorp**

- Mr Adam Rytenskild, Managing Director and CEO

### **Responsible Wagering Australia**

- Mr Justin Madden, CEO

### **BetGold Racing and Sports**

- Mr Peter Laird, CEO

## Appendix D – List of abbreviations

ABN	Australian Business Number
ACT	Australian Capital Territory
Betting Tax Act	<i>Betting Tax Act 2018</i>
Bill	Betting Tax and Other Legislation Amendment Bill 2022
CEO	Chief Executive Officer
Commissioner	Commissioner of State Revenue
committee	Education, Employment and Training Committee
DGE	designated group employer
HRA	<i>Human Rights Act 2019</i>
LSA	<i>Legislative Standards Act 1992</i>
Payroll Tax Act	<i>Payroll Tax Act 1971</i>
Racing Act	<i>Racing Act 2002</i>
Racing Regulation	Racing Regulation 2013
Racing Queensland	Racing Queensland Board
RWA	Responsible Wagering Australia
QRO	Queensland Revenue Office

All Acts are Queensland Acts unless otherwise specified.