

Payroll Tax (Transitional) Regulation 2022

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Cameron Dick MP, Treasurer and Minister for Trade and Investment provide this human rights certificate with respect to the *Payroll Tax (Transitional) Regulation 2022* made under the *Payroll Tax Act 1971*.

In my opinion, the *Payroll Tax (Transitional) Regulation 2022*, as tabled in the Legislative Assembly, 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 Subordinate Legislation

The *Revenue Legislation Amendment Act 2022*, amongst other things, amended the *Payroll Tax Act 1971* from 1 January 2023 to extend the payroll tax deduction from the current ceiling of \$6.5 million in total annual Australian taxable wages up to \$10.4 million. This reflected an increase in the phase out rate of the deduction available for payroll tax from \$1 for every \$4 to a rate of \$1 for every \$7 of taxable wages above the \$1.3 million exemption threshold.

The *Payroll Tax (Transitional Regulation) 2022* provides a transitional framework to support this change to the payroll tax deduction phase out rate for the 2022-23 financial year.

Section 79 of the *Revenue Legislation Amendment Act 2022*, which commences on 1 January 2023, amends the *Payroll Tax Act 1971* to insert new section 148 on that date. Section 148 of the *Payroll Tax Act 1971* will authorise the making of a regulation (a transitional regulation) to make provision about a matter for which:

- it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the *Payroll Tax Act 1971* as in force before its amendment by the *Revenue Legislation Amendment Act 2022*, part 8, division 3, subdivision 1 to the operation of the *Payroll Tax Act 1971* as in force from the commencement; and
- the *Payroll Tax Act 1971* does not provide or sufficiently provide.

Section 17 of the *Acts Interpretation Act 1954* authorises a transitional regulation to be made prior to 1 January 2023 pursuant to new section 148 of the *Payroll Tax Act 1971* with respect to the transition from the existing payroll tax deduction phase out rate to the payroll tax deduction phase out rate as amended by the *Revenue Legislation Amendment Act 2022*.

Payroll tax is imposed on taxable wages paid or payable in a financial year. As the change to the deduction phase out rate commences part way through the 2022-23 financial year, different deduction phase-out rates will apply for the first and second half of that financial year. A transitional framework is necessary to provide for how the deduction formulas will operate to apply these different deduction phase out rates.

The transitional framework in the *Payroll Tax (Transitional Regulation) 2022* provides how an employer's deduction will be calculated for the 2022-23 financial year.

It provides that:

- an employer's periodic deduction is calculated by reference to the existing deduction formulas for periodic return periods in the first half of the 2022-23 financial year and the amended deduction formulas for periodic return periods in the second half;
- an employer's annual deduction is calculated using the existing deduction formulas for the first half of the 2022-23 financial year and the amended deduction formulas for the second half; and
- an employer's final deduction is calculated using the existing deduction formulas for days in the final period which are in the first half of the 2022-23 financial year and the amended deduction formulas for days in the final period which are in the second half.

The existing and amended deduction formulas for calculating annual and final deductions are adjusted under the transitional framework so each relates to the relevant 6-month period, rather than a 12-month period, for the 2022-23 financial year.

This transitional framework enables an employer's periodic, annual and final deductions to be worked out using the appropriate formula or formulas for the 2022-23 financial year. In doing so, it ensures the employer's liability for payroll tax in relation to wages paid or payable for the 2022-23 financial year is calculated as intended and that employers can receive the benefit of the increased deduction phase out rate contemplated in the *Revenue Legislation Amendment Act 2022* for that financial year.

In accordance with new subsection 148(4) of the *Payroll Tax Act 1971*, the *Payroll Tax (Transitional) Regulation 2022* expires one year after new section 148 of the *Payroll Tax Act 1971* commences (i.e. on 1 January 2024).

Human Rights Issues

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

No human rights have been identified as being engaged by the *Payroll Tax (Transitional) Regulation 2022*.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

No human rights have been identified as being limited by the *Payroll Tax (Transitional) Regulation 2022*.

Conclusion

I consider that the *Payroll Tax (Transitional) Regulation 2022* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

CAMERON DICK MP
TREASURER
MINISTER FOR TRADE AND INVESTMENT

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