

# Andrew Barr MLA

## Chief Minister



Member for Kurrajong

Treasurer

Minister for Economic Development

Minister for Tourism and Major Events

Ms Elizabeth Lee MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

CANBERRA ACT 2601

Dear Ms Lee

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its *Scrutiny Report 17* published on 4 May 2018 in relation to the Land Tax Amendment Bill 2018 (the Bill).

I thank the Committee for its consideration of the Bill and provide the following comments in relation to the matters on which the Committee has requested a response.

I provide the following statement addressing the Committee's assertion that effect of the Bill is to limit the right to privacy and reputation under section 12 of the *Human Rights Act 2004*.

Section 12 states that an individual has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. The Committee has recognised that provisions in the Bill require individuals to tell the Commissioner for ACT Revenue (the Commissioner) about facts relating to a liability for land tax or the foreign ownership surcharge (the surcharge). These facts potentially extend to one's home, for example the location of a person's principal place of residence, and one's family, such as whether family members are occupying a particular property.

The purpose of the disclosure is to protect public revenue and ensure people meet their taxation obligations. There is no unlawful or arbitrary interference with a person's privacy and the Government does not consider that there is any limitation on human rights imposed by this aspect of the Bill. The human rights scrutiny team at the Justice and Community Safety Directorate did not consider this aspect of the bill to be in conflict with the *Human Rights Act 2004*.

The *Taxation Administration Act 1999* gives the Commissioner the general administration of tax laws, including the responsibility to assess tax liabilities. In order to make a full and accurate assessment the Commissioner needs to know, as far as practicable, the contributing facts and circumstances. Section 10 of the Taxation Administration Act therefore requires a liable person to fully and truly disclose to the Commissioner all facts and circumstances affecting a liability. Fairness and equity is

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achieved by ensuring all taxpayers disclose correct information and pay the correct amounts of tax based on the law.

There are strong restrictions under the Taxation Administration Act on the confidentiality of information acquired under tax laws, which limit disclosure to other entities.

As land tax and the surcharge apply solely to residential property, information is necessarily collected about personal and family situations as they relate to a liability. Facts about a person's living situation are often not ascertainable from sources other than the person themselves. This collection is directly connected to the issue being addressed, which is the need to have a method of obtaining facts about a person's liability. Notification is not required if the Commissioner ascertains a person's land tax or surcharge liability from other sources, such as information the person has already given the ACT Revenue Office under another law.

In relation to the Committee's request to provide additional information to justify the discriminatory effect of the Bill based on nationality, I provide the following.

It has not previously been within the scope of the ACT rates and land tax system or the ACT Land Titles system to gather information about residential foreign ownership. The experience of foreign buyer surcharges in other jurisdictions has also been too recent for the ACT Government to draw evidence of their impact on foreign buyer behaviour and property prices.

The anticipated impact of the surcharge on the ownership composition of the ACT housing stock is therefore based on an application of supply and demand principles, rather than empirical modelling.

The surcharge will increase holding costs for a cohort of residential property purchasers. Prospective foreign buyers will factor the surcharge into the price they are willing to pay and fewer foreign buyers will purchase homes at these higher prices. Current foreign owners will also face increased holding costs of existing properties, making alternatives to owning the investment more attractive. By increasing the price for residential housing paid by one cohort of purchasers, it can be expected that these owners will reduce the quantity of residential housing they purchase or continue to own. Other things being equal, this reduction will result in property prices being lower than they otherwise would be, improving housing affordability for local residents.

I trust that this response addresses the Committee's concerns.

Yours sincerely

Andrew Barr MLA  
Treasurer