

Queensland



ANNO VICESIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 37 of 1971

An Act to Impose a Tax upon Employers in respect of certain Wages; to provide for the Assessment and Collection of the Tax; and for purposes connected therewith.

[ASSENTED TO 30TH SEPTEMBER, 1971]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY

1. **Short title and commencement.** (1) This Act may be cited as the *Pay-roll Tax Act 1971*.

(2) Subject to subsection 3 of this section, this Act shall be deemed to have commenced on the first day of September, one thousand nine hundred and seventy-one.

(3) If the *Pay-roll Tax Assessment Act* 1941, as subsequently amended, and the *Pay-roll Tax Act* 1941, as subsequently amended, of the Commonwealth, do not cease, as on and from the first day of September, one thousand nine hundred and seventy-one, to impose tax on wages which would, had this Act commenced on that day, have been liable to tax under this Act, this Act shall commence on the day upon which those Acts, as so amended, cease to impose tax on those wages.

2. Parts of Act. This Act is divided into Parts, as follows:—

- PART I—PRELIMINARY (ss. 1-3);
- PART II—ADMINISTRATION (ss. 4-5);
- PART III—LIABILITY TO TAXATION (ss. 6-11);
- PART IV—REGISTRATION AND RETURNS (ss. 12-16);
- PART V—COLLECTION AND RECOVERY OF TAX (ss. 17-31);
- PART VI—OBJECTIONS AND APPEALS (ss. 32-34);
- PART VII—PENAL PROVISIONS (ss. 35-40);
- PART VIII—MISCELLANEOUS (ss. 41-52).

3. Interpretation. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

- “agent” includes every person who in Queensland, for or on behalf of another person outside Queensland, holds or has the management or control of the business of that other person and every person who, by an order of the Commissioner, is declared to be an agent or the sole agent for any other person for the purposes of this Act and on whom notice of that order has been served;
- “Australia” means the States of the Commonwealth;
- “Commissioner” means the person holding office as Commissioner of Pay-roll Tax under this Act;
- “Commonwealth Act” means the *Pay-roll Tax Assessment Act* 1941, as subsequently amended, of the Commonwealth;
- “company” includes all bodies and associations (corporate and unincorporate) and partnerships;
- “corresponding law”, in relation to another State, means a law in force in that State relating to the imposition upon employers of a tax on wages paid or payable by them and the assessment and collection of that tax, but does not include the Commonwealth Act;
- “employer” means any person who pays or is liable to pay any wages and includes the Crown in right of the State of Queensland;
- “financial year” means the period commencing on the first day of September, one thousand nine hundred and seventy-one, and ending on the thirtieth day of June, one thousand nine hundred and seventy-two, and each year thereafter commencing on the first day of July;

- “ liquidator ” means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company;
- “ Local Authority ” means a Local Authority within the meaning of the *Local Government Act* 1936–1971: The term includes Brisbane City Council constituted under the *City of Brisbane Act* 1924–1969;
- “ month ” means the month of January, February, March, April, May, June, July, August, September, October, November or December;
- “ pay-roll tax ” means pay-roll tax chargeable under section 7 of this Act;
- “ person ” includes a company;
- “ tax ” means pay-roll tax, further tax, additional tax or penal tax imposed by or under this Act;
- “ taxable wages ” means wages that, under section 6 of this Act, are liable to pay-roll tax;
- “ trustee ”, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, includes—
- (a) an executor or administrator, guardian, committee, receiver or liquidator; and
 - (b) every person having or taking upon himself the administration or control of any real or personal property affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of any real or personal property of a person under any legal or other disability;
- “ wages ” means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to an employee as such and, without limiting the generality of the foregoing, includes—
- (a) any payment made by way of remuneration to a person holding office under the Crown in right of the State of Queensland or in the service of the Crown in right of the State of Queensland;
 - (b) any payment made under any prescribed classes of contracts to the extent to which that payment is attributable to labour;
 - (c) any payment made by a company by way of remuneration to a director or member of the governing body of that company;
 - (d) any payment made by way of commission to an insurance or time-payment canvasser or collector; and
 - (e) the provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee’s services.

(2) For the purposes of this Act, meals or sustenance provided by an employer shall be deemed to have a value of one dollar fifty cents per week or, in any particular case or class of cases, such other value as

is prescribed in respect of that case or class of cases, and the use of premises or quarters provided by an employer shall be deemed to have a value of fifty cents per week or, in any particular case or class of cases, such other value as is prescribed in respect of that case or class of cases.

(3) For the purposes of this Act, the Australian Capital Territory (including the Jervis Bay Territory) and the Northern Territory of Australia together shall be deemed to be a State of the Commonwealth.

(4) Notwithstanding any other provision of this Act, a reference in this Act to taxable wages does not include a reference to wages that are subject to tax under the *Pay-roll Tax Assessment Act 1941*, as subsequently amended, and the *Pay-roll Tax Act 1941*, as subsequently amended, of the Commonwealth, except wages that—

- (a) are paid after the month of August, one thousand nine hundred and seventy-one, but were payable during or before that month; and
- (b) have not been included in a return made under the Commonwealth Act.

(5) Where the *Pay-roll Tax Assessment Act 1941*, as subsequently amended, and the *Pay-roll Tax Act 1941*, as subsequently amended, of the Commonwealth impose a tax on wages paid and which were payable after the month of August, one thousand nine hundred and seventy-one, the provisions of this Act shall be deemed to be amended as follows:—

- (a) by omitting the definition of “financial year” in subsection (1) of this section and inserting in lieu thereof the following definition:—

“ “financial year” means such periods ending on the thirtieth day of June in any year as may be prescribed;”;

- (b) by omitting from paragraph (a) of subsection (4) of this section the words “month of August, one thousand nine hundred and seventy-one” and inserting in lieu thereof the words “month prescribed for the purposes of subsection (1) of section 6 of this Act”;
- (c) by omitting from subsection (1) of section 6 of this Act the words “month of August, one thousand nine hundred and seventy-one” (wherever occurring) and inserting in lieu thereof the words “prescribed month”;
- (d) by omitting from paragraph (a) of subsection (4) of section 11 of this Act the words “seventeen thousand three hundred and thirty-three dollars and thirty-three cents” and inserting in lieu thereof the words “the prescribed amount”;
- (e) by omitting paragraph (a) of subsection (5) of section 13 of this Act and inserting in lieu thereof the following paragraph:—

“ (a) to the period commencing on the first day of the month next succeeding the month prescribed for the purposes of subsection (1) of section 6 of this Act and ending on such later day, being the last day of a month, as may be prescribed;”.

PART II

ADMINISTRATION

4. Commissioner of Pay-roll Tax. (1) There shall be a Commissioner of Pay-roll Tax who shall have the general administration of this Act.

(2) The Commissioner of Pay-roll Tax shall be the person from time to time holding office as the Commissioner of Stamp Duties under the *Stamp Act 1894-1971*.

(3) The Assistant Commissioner of Stamp Duties under the *Stamp Act 1894-1971* shall be the Assistant Commissioner of Pay-roll Tax and shall have and may exercise and perform all the powers and functions of the Commissioner under this Act.

(4) A Deputy Commissioner of Stamp Duties under the *Stamp Act 1894-1971* shall be a Deputy Commissioner of Pay-roll Tax.

(5) The Commissioner may by instrument in writing under his hand delegate to a Deputy Commissioner of Pay-roll Tax or to any other officer of the Public Service employed in the administration or execution of this Act all or any of his powers or functions under this Act, except this power of delegation or his power to issue a certificate under subsection (8) of section 46 of this Act.

(6) A delegation under subsection (5) of this section may be revoked at any time by the Commissioner.

(7) A power or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate.

(8) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(9) Notwithstanding the provisions of subsection (5) of this section or any delegation made under this section, the Commissioner may continue to exercise or perform all or any of the powers or functions conferred or imposed on him by this Act.

(10) Any act or thing done or suffered by the Assistant Commissioner of Pay-roll Tax, or by a Deputy Commissioner of Pay-roll Tax or another officer of the Public Service while acting in the exercise of a delegation under this section, shall have the same force and effect as if the act or thing done had been done or suffered by the Commissioner.

(11) Where the exercise or performance by the Commissioner of any power or function under this Act or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised or performed by the Assistant Commissioner of Pay-roll Tax, or by a Deputy Commissioner of Pay-roll Tax or another officer of the Public Service, acting as a delegate of the Commissioner in relation to that matter, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of that Assistant Commissioner or such a Deputy Commissioner or officer so acting.

5. Disclosure of information. (1) Except as provided by subsection (2) of this section, a person shall not disclose any information or publish any document or part of a document obtained by him in connexion with the administration or execution of this Act, unless the disclosure or publication is made—

- (a) with the consent of the person from whom the information or document was obtained;
- (b) in connexion with the administration or execution of this Act; or
- (c) for the purpose of any legal proceedings arising out of this Act or of any report of any such proceedings.

Penalty: \$1,000.

(2) The Commissioner may communicate any matter which comes to his knowledge in the exercise or performance of his powers and duties under this Act to the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation of the Commonwealth or to the officer or authority administering or executing a corresponding law.

(3) Nothing in subsection (1) of this section prevents the disclosure of information or the publication of a document in accordance with any lawful requirement of the Commonwealth Statistician.

PART III

LIABILITY TO TAXATION

6. Wages liable to pay-roll tax. (1) Subject to section 10 of this Act, the wages liable to pay-roll tax under this Act are wages that are paid or payable by an employer after the month of August, one thousand nine hundred and seventy-one (whether in respect of services performed or rendered before, during or after that month), and—

- (a) that are paid or payable in Queensland (not being wages so paid or payable in respect of services performed or rendered wholly in one other State); or
- (b) that are paid or payable elsewhere than in Queensland in respect of services performed or rendered wholly in Queensland, except wages that—
- (c) are paid after the month of August, one thousand nine hundred and seventy-one, but were payable during or before that month; and
- (d) have been included in a return made under the Commonwealth Act.

(2) For the purposes of paragraph (a) of subsection (1) of this section, wages that are payable to a person by his employer, but have not been paid, (not being wages that under the terms of employment are payable in Queensland or in another State) shall be deemed—

- (a) where those wages are payable in respect of services performed or rendered wholly in Queensland—to be wages payable to that person in Queensland;

- (b) where those wages are not payable in respect of services performed or rendered wholly in Queensland or wholly in one other State and the wages last paid or payable to that person by that employer were included or are required to be included in a return under this Act—to be wages payable to that person in Queensland; or
- (c) where those wages are not deemed by paragraph (a) or (b) of this subsection or by any provision of a corresponding law that corresponds to either of those paragraphs to be wages payable to that person in Queensland or in another State—to be wages payable to that person at the place where that person last performed or rendered any services for that employer before those wages became payable.

(3) For the purposes of this section, where a cheque, bill of exchange, promissory note, money order or postal order issued by a post office, or any other instrument is sent or given by an employer to a person or his agent at a place in Australia in payment of wages, those wages shall be deemed to have been paid at that place and to have been paid when the instrument was so sent or given.

7. Imposition of pay-roll tax on taxable wages. Subject to, and in accordance with, the provisions of this Act, there shall be charged, levied and paid for the use of Her Majesty on all taxable wages pay-roll tax at the rate of three and one-half per centum of those wages.

8. Employer to pay pay-roll tax. Pay-roll tax shall be paid by the employer by whom the taxable wages are paid or payable.

9. General exemption. (1) For the purpose of ascertaining the pay-roll tax payable by an employer, there shall, subject to this section, be deducted from the amount of the taxable wages included in a return furnished in accordance with section 13 or section 14 of this Act, or from the amount of any taxable wages assessed by the Commissioner in pursuance of section 18 of this Act—

- (a) where the return or assessment relates to one month—the prescribed amount referred to in subsection (3) of this section; or
- (b) where the return or assessment relates to a period of more than one month—for each month included in that period, the prescribed amount referred to in subsection (3) of this section.

(2) For the purpose of ascertaining the pay-roll tax payable by an employer who was an employer during part only of a month, the amount to be deducted for that month from the amount of the taxable wages included in a return or assessment relating to that month or a period that includes that month shall be the amount which bears to the prescribed amount referred to in subsection (3) of this section applicable to the employer the same proportion as the number of days in that month during which the employer was an employer bears to the total number of days in that month.

(3) For the purposes of subsections (1) and (2) of this section, the prescribed amount is—

- (a) where the employer is not entitled under this section to claim another amount—the amount of one thousand seven hundred and thirty-three dollars and thirty-three cents; or
- (b) where the employer is so entitled—that other amount.

(4) Where an employer is or was required under a corresponding law to include any wages in a return made under that law relating to a month or relating to any other period and he is or was also required to include any taxable wages in a return under this Act relating to that month or any month included in that period, a deduction shall not be made under this section from those taxable wages unless he has served on the Commissioner a nomination, in the prescribed form containing the prescribed particulars, nominating an amount, calculated in the prescribed manner, not exceeding one thousand seven hundred and thirty-three dollars and thirty-three cents as the deduction that he claims to be entitled to make for that month or for each month included in that period and for subsequent months or for each month included in subsequent periods, as the case may require.

(5) Where an employer has served on the Commissioner a nomination in accordance with subsection (4) of this section, he is, if a determination under subsection (6) or (7) of this section has not been made in respect of that employer, entitled, in any return relating to the month or period next preceding the day on which he served the nomination on the Commissioner or relating to a subsequent month or period, to claim, as the prescribed amount, the amount specified in the nomination.

(6) If an employer is entitled, in accordance with subsection (5) of this section, to claim an amount as the prescribed amount and the Commissioner is of the opinion that that amount is unreasonably high, the Commissioner may make a determination specifying an amount, not exceeding one thousand seven hundred and thirty-three dollars and thirty-three cents, that may be claimed by the employer and the amount so specified shall, notwithstanding subsection (5) of this section, be deemed to be the amount that that employer was or is entitled to claim as the prescribed amount in any return relating to a month or period—

(a) that ends in the financial year in which the determination is made and is specified in the determination (whether the month or period so specified is before or after, or is the month or period during which, the determination is made); or

(b) that ends in any subsequent financial year.

(7) The Commissioner may, on an application made to him in writing by an employer, at any time make a determination specifying an amount, not exceeding one thousand seven hundred and thirty-three dollars and thirty-three cents, that may be claimed by that employer as the prescribed amount or may at any time make such a determination of his own motion, and the amount so specified shall, notwithstanding any other provision of this section, be deemed to be the amount that the employer is, in the return relating to the month or period in which the determination is made and to any subsequent month or period, entitled to claim as the prescribed amount.

(8) The Commissioner shall, as soon as practicable after making a determination under subsection (6) or (7) of this section, serve notice of the determination on the employer concerned.

(9) Where the amount to be deducted in pursuance of this section from the amount of any taxable wages included in any return or assessment relating to a month or other period included in any financial year exceeds the amount of the taxable wages included in that return or

assessment, the amount of the excess shall be deducted from the taxable wages included in the return or assessment next made by or on the employer relating to a month or other period included in that financial year.

10. Exemption from pay-roll tax. The wages liable to pay-roll tax under this Act do not include wages paid or payable—

- (a) by the Governor of a State;
- (b) by a religious or public benevolent institution, or a public hospital;
- (c) by a hospital which is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association;
- (d) by a school or college (other than a technical school or a technical college) which—
 - (i) is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association and is not carried on by or on behalf of the State of Queensland; and
 - (ii) provides education at or below, but not above, the secondary level of education;
- (e) by a local authority, except to the extent that those wages are paid or payable—
 - (i) for or in connexion with; or
 - (ii) for or in connexion with the construction of any buildings or the construction of any works or the installation of plant, machinery or equipment for use in or in connexion with, electricity generation, distribution or supply, water supply, sewerage, the conduct of transport services (including ferries), of abattoirs, of public markets, of parking stations, of quarries, of cemeteries, of picture theatres, of milk supply, of hostels, of hotels or of bakeries or of any other activity that is a prescribed activity;
- (f) to members of his official staff by—
 - (i) a consular or other representative (other than a diplomatic representative) in Australia of the Government of any other part of Her Majesty's dominions or of any other country; or
 - (ii) a Trade Commissioner representing in Australia any other part of Her Majesty's dominions;
- (g) by the Commonwealth War Graves Commission;
- (h) by the Australian-American Educational Foundation; or
- (i) to a person who is a member of the Defence Force of the Commonwealth or of the armed force of any part of Her Majesty's dominions, being wages paid or payable by reason of his being such a member by the employer from whose employment the person is on leave.

11. Refund or rebate of pay-roll tax on annual adjustment. (1) Where the wages included or required to be included in returns relating to a financial year made or to be made by an employer under this Act, or under this Act and under a corresponding law or corresponding laws—

- (a) in the case of an employer who was an employer in Australia during the whole of that financial year—do not exceed the amount prescribed in subsection (4) of this section in respect of that financial year; or
- (b) in the case of an employer who was an employer in Australia during part only of that financial year—do not exceed an amount that bears to the amount prescribed in subsection (4) of this section in respect of that financial year the same proportion as that part of the financial year bears to that financial year,

the Commissioner shall, upon application by the employer made in accordance with subsection (3) of this section, refund or rebate to that employer the amount of pay-roll tax paid or payable, as the case may be, by him to the Commissioner in respect of that financial year or part.

(2) Where the total deductions made, in accordance with section 9 of this Act or with a provision of a corresponding law, from the wages included or required to be included in returns relating to a financial year made or to be made by an employer under this Act, or under this Act and under a corresponding law or corresponding laws—

- (a) in the case of an employer who was an employer in Australia during the whole of that financial year—are less than the amount prescribed in subsection (4) of this section in respect of that financial year; or
- (b) in the case of an employer who was an employer in Australia during part only of that financial year—are less than an amount (that amount being referred to in paragraph (b) of subsection (5) of this section as “the proportionate amount”) that bears to the amount prescribed in subsection (4) of this section in respect of that financial year the same proportion as that part of the financial year bears to that financial year,

the Commissioner shall, upon application by the employer made in accordance with subsection (3) of this section—

- (c) where the employer has not included and is not required to include any wages paid or payable in respect of that financial year or that part of the financial year, as the case may be, in a return made under a corresponding law, refund or rebate to the employer an amount equal to the pay-roll tax paid or payable, as the case may be, by him to the Commissioner upon the amount of the deficiency; or
- (d) where the employer has included or is required to include wages paid or payable in respect of that financial year or that part of the financial year, as the case may be, in a return under a corresponding law and in a return under this Act, refund or rebate to the employer an amount equal to the pay-roll tax paid or payable, as the case may be, by him to the Commissioner upon—

- (i) the amount of the deficiency referred to in paragraph (a) or (b) of this subsection, as the case may require; or

- (ii) the amount, if any, by which the calculated deductions applicable to him in respect of that financial year exceed the total deductions actually made by him in accordance with section 9 of this Act in respect of that financial year or part, whichever amount is the lesser.

(3) An application under subsection (1) or (2) of this section shall, notwithstanding section 19 of this Act, be made within the financial year next following the financial year in respect of which the refund or rebate is applied for.

(4) For the purposes of subsections (1) and (2) of this section—

- (a) the amount prescribed in respect of the first financial year after the commencement of this Act, is seventeen thousand three hundred and thirty-three dollars and thirty-three cents; and
(b) the amount prescribed in respect of any subsequent financial year is twenty thousand eight hundred dollars.

(5) For the purposes of subsection (2) of this section, the calculated deductions applicable to an employer in respect of a financial year are an amount—

- (a) where the employer was an employer (whether or not only in Queensland) during the whole of that financial year—that bears to the amount prescribed in subsection (4) of this section in respect of that financial year; or
(b) where the employer was an employer (whether or not only in Queensland) during part only of that financial year—that bears to the proportionate amount ascertained in accordance with paragraph (b) of subsection (2) of this section and applicable to that employer,

the same proportion as the total taxable wages included or required to be included in returns made by that employer under this Act relating to months or other periods ending in that financial year bear to the total wages included or required to be included in returns made by that employer under this Act and under a corresponding law or corresponding laws relating to months or other periods ending in that financial year.

(6) Where a person who, during any part of a financial year, did not pay, and was not liable to pay, taxable wages satisfies the Commissioner that, by reason of the nature of his trade or business, the taxable wages paid or payable by him fluctuate with different periods of the financial year the Commissioner may treat him—

- (a) if he has conducted that trade or business during the whole of the financial year—as an employer throughout the financial year; or
(b) if he has conducted that trade or business during part only of the financial year—as an employer during that part of the financial year.

(7) Notwithstanding anything contained in this section, the total amount refunded or rebated to any employer in pursuance of this section in respect of any financial year shall not exceed the amount of pay-roll tax paid or payable by him to the Commissioner in respect of that financial year.

PART IV
REGISTRATION AND RETURNS

12. Registration. (1) An employer (not being an employer who is registered as an employer) who, during a month, pays or is liable to pay, anywhere, wages at a rate in excess of four hundred dollars per week, the whole or any part of which is taxable wages, shall apply, within seven days after the close of that month, to the Commissioner in the prescribed form and manner, for registration as an employer, and thereupon the Commissioner shall register him as an employer under this Act.

(2) The Commissioner may cancel the registration of a person as an employer if that person has ceased to be an employer paying wages as referred to in subsection (1) of this section.

(3) A person, who immediately before the commencement of this Act was the holder of a certificate in force under the regulations made under the Commonwealth Act to the effect that he was registered as an employer in respect of the State of Queensland, shall be deemed to be registered as an employer under this Act but, where he is required by a notice in writing served on him by the Commissioner to apply to the Commissioner within the time specified in the notice for registration as an employer, he shall cease to be deemed to be so registered upon the expiration of that time.

13. Returns. (1) Every employer who is registered or required to apply for registration in accordance with the provisions of section 12 of this Act shall, within seven days after the close of each month, furnish to the Commissioner, in accordance with the form and in the manner prescribed, a return relating to that month and shall specify in that return any taxable wages that were paid or payable by him during that month.

(2) Where the Commissioner is of the opinion that it would be unduly onerous to require an employer to furnish returns—

(a) within the time specified in subsection (1) of this section, he may, by notice in writing, vary the time within which that employer is required to furnish returns in pursuance of that subsection; or

(b) relating to each month, the Commissioner may, by notice in writing, authorize that employer to furnish returns relating to such periods as may be specified in the notice,

and the employer shall, while that notice remains unrevoked, furnish returns accordingly.

(3) The Commissioner may, at any time, by notice in writing, revoke any notice given in pursuance of subsection (2) of this section.

(4) An employer who, under the Commonwealth Act, was, immediately before the commencement of this Act, required to furnish returns under that Act within a specified time, being longer than seven days, or relating to periods of three months or periods of six months, shall be deemed to have been required by a notice under subsection (2) of this section to furnish returns under this Act within the time so specified or relating to prescribed periods, as the case may be.

(5) For the purposes of subsection (4) of this section, a reference to a prescribed period is, in relation to any employer, a reference—

(a) to the period commencing on the first day of September, one thousand nine hundred and seventy-one, and ending on the thirty-first day of December, one thousand nine hundred and seventy-one; and

(b) where—

(i) that employer was required under the Commonwealth Act to furnish returns relating to periods of three months— to each period of three months; or

(ii) that employer was required under the Commonwealth Act to furnish returns relating to periods of six months— to each period of six months,

that is after the period referred to in paragraph (a) of this subsection.

14. Exemption from furnishing returns. (1) If the Commissioner is of the opinion that no tax will be payable by an employer, or, if paid, would be refunded, he may issue a certificate to that employer exempting him from furnishing monthly returns in accordance with the provisions of section 13 of this Act and any employer to whom such a certificate is issued may refrain from furnishing monthly returns but shall, unless the contrary is expressed in the certificate, furnish a return relating to each financial year within twenty-one days after the close of that financial year.

(2) A certificate issued under subsection (1) of this section may be either unconditional or subject to such conditions as are prescribed or as the Commissioner thinks fit.

(3) The issue of a certificate under subsection (1) of this section shall not exempt an employer from the payment of any pay-roll tax, notwithstanding that it may have the effect of postponing the time for payment of any pay-roll tax.

(4) A certificate in force, immediately before the commencement of this Act, under the Commonwealth Act exempting an employer from furnishing monthly returns shall be deemed to be a certificate issued by the Commissioner under subsection (1) of this section and any conditions to which such a certificate was subject shall be deemed to be conditions imposed by the Commissioner under subsection (2) of this section.

15. Further returns. In addition to any return required to be furnished by this Act, the Commissioner may, by notice in writing, call upon any employer or person to furnish to him, within the time specified in the notice, such return or such further or fuller return, as the Commissioner requires, whether on his own behalf or as an agent or a trustee.

16. Power to obtain information and evidence. (1) The Commissioner may, by notice in writing, require any employer or person—

(a) to furnish him with such information as he requires; or

(b) to attend and give evidence before him or before any officer of the Public Service employed in the administration or execution of this Act and authorized by him in that behalf,

for the purpose of inquiring into or ascertaining his or any other person's liability or entitlement under any of the provisions of this Act, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.

(2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration and for that purpose he or the officer so authorized by him may administer an oath.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

PART V

COLLECTION AND RECOVERY OF TAX

17. Time for payment of tax. Every employer liable to pay pay-roll tax shall pay the pay-roll tax within the time within which he is required by this Act to lodge the return of the wages in respect of which the pay-roll tax is payable.

18. Assessments. (1) Where the Commissioner finds in any case that pay-roll tax or further tax is payable by any employer, the Commissioner may—

- (a) assess the amount of taxable wages paid or payable by the employer; and
 - (b) calculate the pay-roll tax or further tax payable thereon.
- (2) Where—
- (a) any employer fails or neglects duly to furnish any return as and when required by this Act or by the Commissioner;
 - (b) the Commissioner is not satisfied with the return made by any employer; or
 - (c) the Commissioner has reason to believe or suspect that any employer (though he may not have furnished any return) is liable to pay pay-roll tax,

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, pay-roll tax or further tax ought to be levied and that person shall be liable to pay pay-roll tax or further tax thereon, except in so far as he establishes, on objection or appeal, that the assessment is excessive.

(3) Subsection (2) of this section does not operate so as to authorize the Commissioner to cause an assessment to be made as referred to in that subsection by reason that any deduction made from the wages included in any return is not correctly made if the deduction is made in accordance with section 9 of this Act.

(4) Where the Commissioner makes a determination under subsection (6) of section 9 of this Act in respect of a month or period ending before the determination is made, the Commissioner may cause an assessment to be made of the further tax that would have been payable by the employer concerned had the deduction been made from the wages included in the return for that month or period at the rate specified in the determination, and that employer shall be liable to pay that further tax, except in so far as he establishes, on objection or appeal, that the amount determined by the Commissioner is too little.

(5) Any employer who becomes liable to pay pay-roll tax or further tax by virtue of an assessment made under subsection (2) of this section shall also be liable to pay, by way of additional tax, double the amount of that pay-roll tax or further tax (reduced by the amount

of any additional tax for which that employer became liable by reason of his being an employer to whom subsection (1) of section 36 of this Act applied and which he has paid in respect of the taxable wages in respect of which the pay-roll tax or further tax was assessed) or the amount of two dollars, whichever is the greater, but the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(6) As soon as conveniently may be after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and of the pay-roll tax, further tax or additional tax to be served on the employer liable to pay it.

(7) The amount of pay-roll tax, further tax or additional tax specified in the notice shall be payable on or before the date specified in the notice together with any other amount which may be payable in accordance with any other provision of this Act.

(8) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

19. Refunds. Where the Commissioner finds in any case that tax has been overpaid he may, upon application therefor being made by the person entitled thereto within two years after the date of the overpayment, refund to that person the amount of tax found to be overpaid.

20. Employer leaving Australia. When the Commissioner has reason to believe that an employer may leave Australia before any tax becomes due and payable by him, the tax shall be due and payable on such date as the Commissioner fixes and specifies in a notice served on the employer.

21. Time to pay—extensions and instalments. The Commissioner may, in such cases as he thinks fit—

- (a) extend the time for payment of any tax by such period as he considers the circumstances warrant; or
- (b) permit the payment of tax to be made by instalments within such time as he considers the circumstances warrant.

22. Penal tax (1) If pay-roll tax, further tax or additional tax assessed under this Part is not paid before the expiration of the time specified in section 17 or 18 of this Act, or such further time as may be allowed by the Commissioner under section 21 of this Act, penal tax shall forthwith be payable—

- (a) where it is paid on or before the fourteenth day after that time, at the rate of one per centum;
- (b) where it is not paid on or before the fourteenth day but it is paid within one month after that time, at the rate of five per centum;
- (c) where it is not paid within one month but is paid within one year after that time, at the rate of ten per centum; or
- (d) where it is not paid as referred to in subparagraph (a), (b) or (c) of this paragraph, at the rate of ten per centum for each year or part of a year during which it is not paid,

of the pay-roll tax, further tax or additional tax, as the case may be or, if the amount of the penal tax ascertained at the relevant rate does not amount to two dollars, in the amount of two dollars.

(2) The Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the penal tax or any part thereof.

23. Recovery of tax. (1) Tax shall be deemed when it becomes due and payable to be a debt due to Her Majesty and payable to the Commissioner.

(2) Any tax unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner, the Assistant Commissioner or a Deputy Commissioner suing in his official name.

24. Substituted service. If, in any proceedings against an employer for the recovery of any tax, the defendant—

(a) is absent from Australia and has not, to the knowledge of the Commissioner after reasonable inquiry in that behalf, any attorney or agent in Australia on whom service of process can be effected; or

(b) cannot after reasonable inquiry be found, service of any process in the proceedings may, without leave of the court, be effected on him by posting it by prepaid post addressed to him at his last known place of business or abode in Australia.

25. Liquidator to give notice. (1) Every person who is liquidator of any company which is being wound-up and which is an employer registered or required to be registered under this Act, shall, within fourteen days after he has become liquidator of that company, serve on the Commissioner notice in writing of his appointment as liquidator.

(2) The Commissioner shall, as soon as practicable thereafter, notify to the liquidator the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company.

(3) The liquidator—

(a) shall not without leave of the Commissioner part with any of the assets of the company until he has been so notified;

(b) shall set aside out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and

(c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the tax.

(4) If the liquidator fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which he is liable under subsection (3) of this section), he shall, to the extent of the value of the assets of which he has taken possession and which are, or were at any time, available to him for the payment of the tax, be personally liable to pay the tax, and shall be guilty of an offence.

Penalty: \$1,000.

(5) Where more persons than one are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of those persons and, where any one of those persons has paid the tax due in respect of the company being wound-up, the other person or persons shall each be liable to pay that person his equal share of the amount of the tax so paid.

(6) Notwithstanding anything contained in this section provision, which in the opinion of the Commissioner is proper, may be made for the costs and expenses referred to in paragraph (a) of subsection (1) of section 292 of the *Companies Act 1961-1971* and debts of a class referred to in any other paragraph of that subsection (paragraph (e) excepted) may be paid out of the assets of the company in priority to any tax payable in respect of the company and that tax shall rank equally with debts of the class specified in paragraph (e) of the said subsection.

(7) Nothing in this section—

- (a) limits the liability of a liquidator under section 42 of this Act; or
- (b) save as provided in subsection (6) of this section, affects any of the provisions of the *Companies Act 1961-1971*.

(8) Any person who has, before the day upon which the assent of Her Majesty to this Act was signified, given notice of his appointment as a liquidator in accordance with the Commonwealth Act shall not be guilty of an offence by reason of his failure to serve notice of his appointment in accordance with subsection (1) of this section, but shall be deemed, as on and from that day, to be subject to the provisions of this section, other than subsection (1), applying to liquidators.

26. Agent for absentee principal winding-up business. (1) Where an agent for an absentee principal has been required by the principal to wind-up the business of his principal he shall, before taking any steps to wind-up the business, serve on the Commissioner notice of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any tax that becomes payable.

(2) An agent who fails to give notice to the Commissioner or fails to provide for payment of the tax as required by this section shall be personally liable for any tax that becomes payable in respect of the business of the principal, and shall be guilty of an offence.

Penalty: \$1,000.

(3) Any agent for an absentee principal who has, before the day upon which the assent of Her Majesty to this Act was signified, given notice, in accordance with the Commonwealth Act, of his intention to take steps to wind-up the business of his principal shall not be guilty of an offence by reason of his failure to serve notice as provided by subsection (1) of this section, but shall be deemed, as on and from that day, to be subject to the provisions of this Act, other than the provisions of subsection (1) of this section requiring him to give such a notice to the Commissioner, applying to agents for absentee principals.

27. Where tax not paid during lifetime. (1) The following provisions of this section apply where, whether intentionally or not, a person escapes full payment of tax in his lifetime by reason of his not having duly made any, or full, complete and accurate returns.

(2) The Commissioner has the same powers and remedies against the trustees of the estate of that person in respect of the liability to which that person was subject as he would have had against that person if he were still living.

(3) The trustees shall make such returns under this Act as the Commissioner requires.

(4) The trustees are subject to tax to the same extent as the deceased person would be subject to tax if he were still living, but the Commissioner may in a particular case, for reasons that, in his discretion, he thinks sufficient, remit any tax or a part thereof.

(5) The amount of any tax payable by the trustees is a charge on all the deceased person's estate in their hands in priority to all other encumbrances.

28. Provision for payment of tax by executors or administrators.

(1) Where, at the time of an employer's death, he had not paid the whole of the tax payable up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the executors and administrators as he would have had against that employer, if he were alive.

(2) The executors or administrators shall furnish such of the returns mentioned in Part IV of this Act as have not been made by the deceased.

(3) Where the executors or administrators are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the taxable wages on which, in his judgment, pay-roll tax ought to be charged.

(4) Where, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within six months of his death, the Commissioner may cause an assessment to be made of the amount of tax due by the deceased.

(5) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State or Territory of the Commonwealth in which the deceased resided.

(6) Any person claiming an interest in the estate of the deceased may, within forty-two days after the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies.

(7) Subject to any amendment of the assessment by the Commissioner or by the Court on appeal, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

(8) The Supreme Court may, on application by the Commissioner, order that a sufficient part of the property of the deceased be sold to pay the assessment and the costs of the application and any property sold pursuant to such an order shall vest in the purchaser.

(9) Notwithstanding anything contained in subsections (7) and (8) of this section, if at any time probate of the will of the deceased is, or letters of administration of the estate are, granted to a person, that person may, within forty-two days after the date on which probate was, or letters of administration were, granted, lodge with the Commissioner an objection against the assessment, stating fully and in detail the grounds on which he relies.

29. Recovery of tax paid on behalf of another person. Every person who, under the provisions of this Act, pays any tax for or on behalf of any other person shall be entitled to recover the amount so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in his hands belonging or payable to that other person.

30. Contributions from joint taxpayers. Where two or more persons are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax may recover contributions as follows :—

- (a) a person who has paid the tax in respect of any wages may recover by way of contribution from any other person jointly liable to that tax a sum which bears to the tax the same proportion as the share of the taxable wages which that other person paid or was liable to pay bears to the total amount of taxable wages which the persons jointly liable to tax paid or were liable to pay;
- (b) every person entitled to contribution under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request, or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute.

31. Commissioner may collect tax from person owing money to employer. (1) The Commissioner may, by notice in writing (a copy of which shall be served on the employer at his last known place of abode or business), require—

- (a) any person by whom any money is due or accruing or may become due to an employer;
- (b) any person who holds or may subsequently hold money for or on account of an employer;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to an employer; or
- (d) any person having authority from some other person to pay money to an employer,

to pay to him forthwith upon the money becoming due or being held, or within such further time as the Commissioner allows; the money or so much thereof as is sufficient to pay the tax due by the employer or the fines and costs, if any, imposed by a court on him in respect of an offence against this Act.

(2) Any person who fails to comply with any notice under this section shall be guilty of an offence.

Penalty: \$1,000.

(3) Where any amount referred to in subsection (1) of this section is less than the amount of tax due by the employer, the person shall pay to the Commissioner in reduction of the amount of tax due the amount payable by that person to the employer.

(4) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the employer and of all other persons concerned, and is hereby indemnified in respect of such payment.

(5) If the tax due by the employer, or the fine and costs, if any, imposed by a court on him, are paid before any payment is made under a notice given in pursuance of this section, the Commissioner shall forthwith give notice to the person of the payment.

(6) In this section "tax" includes any judgment debt and costs in respect of any tax.

PART VI

OBJECTIONS AND APPEALS

32. Objections. (1) A person who is dissatisfied with any decision, determination or assessment made by the Commissioner under this Act, by which his liability to pay tax is affected, may, within sixty days after service of notice of the decision, determination or assessment, as the case may be, post to, or lodge with, the Commissioner an objection in writing stating fully and in detail the grounds on which he relies.

(2) Notwithstanding subsection (1) of this section, where an assessment is an amended assessment the person objecting to the assessment shall have no further right of objection than he would have had if the amended assessment had not been made except to the extent to which, by reason of the amended assessment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

(3) The Commissioner shall consider the objection, and may either disallow it, or allow it, either wholly or in part.

(4) The fact that an objection has been made with respect to any liability or assessment shall not pending a decision on the objection interfere with or affect the liability or assessment the subject of the objection and the tax may be recovered as if no objection were awaiting determination.

(5) If the person's liability or assessment has been reduced by the Commissioner after considering the objection, the Commissioner shall refund to the person any amounts paid by him in excess.

(6) The Commissioner shall serve on the objector written notice of his decision on the objection.

33. Appeal. (1) A person who is dissatisfied with a decision of the Commissioner on an objection made by that person may, within thirty days after service on him of notice of that decision or within such further time as the Commissioner may allow, by a request in writing accompanied by a fee of five dollars request the Commissioner to treat his objection as an appeal and to forward it to the Supreme Court, and the Commissioner shall, as soon as practicable, forward it accordingly.

(2) Any appeal made in accordance with subsection (1) of this section shall be forwarded to, and shall be heard and determined by, the Supreme Court in accordance with Rules of Court.

(3) On appeal—

(a) the objector shall be limited to the grounds stated in his objection; and

(b) the burden of proving that any assessment objected to is excessive lies on the objector.

(4) If the person's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.

34. Pending appeal not to delay payment of tax. (1) The fact that an appeal is pending with respect to any liability or assessment shall not in the meantime interfere with or affect the liability or assessment the subject of that appeal, and the tax may be recovered as if no appeal were pending.

(2) If the liability or assessment is altered on appeal, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

PART VII

PENAL PROVISIONS

35. Offences. (1) Any person who—

- (a) fails or neglects duly to furnish any return or information or to comply with any requirement of the Commissioner as and when required by this Act, or by the Commissioner;
- (b) without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Commissioner or any officer of the Public Service employed in the administration or execution of this Act and duly authorized by the Commissioner, or to answer truly and fully any questions put to him, or to produce any books or papers required of him by the Commissioner or any such officer;
- (c) makes or delivers a return which is false in any particular or makes any false answer whether orally or in writing; or
- (d) contravenes any provision of this Act for the contravention of which no penalty is expressly provided,

shall be guilty of an offence.

Penalty: \$1,000.

(2) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section 37 of this Act.

(3) Where an offence against this section arises under paragraph (a) or (d) of subsection (1) of this section by reason of the neglect or failure of a person to do anything within a particular period, the offence shall, for the purposes of subsection (2) of this section, be deemed to continue for as long as the thing remains undone, notwithstanding that that period has elapsed.

36. Additional tax in certain cases. (1) Notwithstanding anything contained in section 35 of this Act, any employer who furnishes a return to the Commissioner, but fails or neglects to include in that return all of the taxable wages required by this Act to be included in that return shall be liable to pay by way of additional tax double the amount of the difference between the pay-roll tax properly payable and the pay-roll tax payable upon the basis of the return furnished, or the amount of two dollars, whichever is the greater.

(2) The Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(3) If the Commissioner considers that the circumstances of any case warrant action being taken to recover the penalty provided by section 35 of this Act, that action may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

37. Avoiding taxation. Any person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid pay-roll tax chargeable under this Act, shall be guilty of an offence.

Penalty: \$1,000 and treble the amount of pay-roll tax avoided or attempted to be avoided.

38. Time for commencing prosecutions. (1) A prosecution in respect of any offence against section 37 of this Act may be commenced at any time within three years after the commission of the offence.

(2) A prosecution in respect of any offence arising under paragraph (a) or (c) of subsection (1) of section 35 of this Act may be commenced at any time.

39. Penalties not to relieve from tax. Payment of penalties under this Act shall not relieve any person from liability to any tax for which he would otherwise be liable.

40. Obstructing officers. Any person who obstructs or hinders any officer of the Public Service acting in the administration or execution of this Act shall be guilty of an offence.

Penalty: \$1,000.

PART VIII

MISCELLANEOUS

41. Public officer of company. (1) The Commissioner may, by notice served on a company, require the company to appoint, within such period as is specified in the notice, a public officer of the company for the purposes of this Act, and to keep the office of public officer constantly filled.

(2) An appointment of a public officer shall be deemed not to be duly made until after notice of the appointment in writing, specifying the name of the officer, has been lodged with the Commissioner.

(3) Service of a document on the public officer of the company is sufficient service on the company for the purposes of this Act, and, if at any time there is no public officer, then service on any person acting or appearing to act in the business of the company is sufficient.

(4) The public officer is answerable for the doing of all such things as are required to be done by the company under this Act, and, in case of default, is liable to the same penalties.

(5) Everything done by the public officer that he is required to do in his representative capacity shall be deemed to have been done by the company and the absence or non-appointment of a public officer does not excuse the company from the necessity of complying, or from any penalty

for failure to comply, with any of the provisions of this Act, but the company is liable to comply with the provisions of this Act as if there were no requirement to appoint a public officer.

(6) A notice served on or requisition made upon the public officer shall be deemed to be served on or made upon the company.

(7) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company is liable jointly with the public officer for any penalty imposed upon him.

(8) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding that, under this Act, may be given to, served on or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served on or taken against any director, secretary or other officer of the company or any attorney or agent of the company, and that director, secretary, officer, attorney or agent has the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.

42. Agents and trustees. With respect to every agent and with respect also to every trustee, the following provisions shall apply:—

- (a) He shall be answerable as an employer for the doing of all such things as are required to be done by virtue of this Act in respect of the payment of any wages which are subject to pay-roll tax under this Act;
- (b) He shall, in respect of any such wages, make the returns and be chargeable with pay-roll tax thereon, but in his representative capacity only, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) If he is an executor or administrator, the returns shall be the same as far as practicable as those the deceased person, if living, would have been liable to make;
- (d) Where as agent or trustee he pays tax, he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it, or to deduct it from any money in his hands belonging to that person;
- (e) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax;
- (f) He is hereby made personally liable for the tax payable if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he, except with the written permission of the Commissioner, disposes of or parts with any fund or money which comes to him from or out of which tax could legally be paid, but he shall not be otherwise personally liable for the tax;
- (g) He is hereby indemnified for all payments which he makes in pursuance of this Act or by the requirements of the Commissioner;

- (h) For the purpose of ensuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other person in respect of tax, and in as full and ample a manner.

43. Person in receipt or control of money for absentee. With respect to every person who has the receipt, control or disposal of money belonging to a person resident out of Australia, who is liable to pay tax under this Act, the following provisions shall, subject to this Act, apply:—

- (a) He shall when required by the Commissioner pay the tax due and payable by the person on whose behalf he has the receipt, control or disposal of money;
- (b) Where he pays tax in accordance with paragraph (a) of this section he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person;
- (c) When he is so required by the Commissioner, he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the person resident out of Australia so much as is sufficient to pay the tax which is or will become due by that person;
- (d) He is hereby made personally liable for the tax payable by him on behalf of the person resident out of Australia if, after the Commissioner has required him to pay the tax, he, except with the written permission of the Commissioner, disposes of or parts with any fund or money then in his possession, or which comes to him from or out of which the tax could legally be paid, but he shall not be otherwise personally liable for the tax;
- (e) He is hereby indemnified for all payments which he makes in pursuance of this Act or in accordance with the requirements of the Commissioner.

44. Books, accounts, etc., to be preserved. (1) Every person who is an employer registered or required to be registered under this Act shall, for the purposes of this Act, keep proper books or accounts and shall preserve those books or accounts, for a period of not less than five years after the completion of the transactions to which they relate.

Penalty: \$1,000.

(2) This section shall not apply so as to require the preservation of any books, accounts or documents—

- (a) in respect of which the Commissioner has notified the employer that preservation is not required; or
- (b) of a company which has gone into liquidation and which has been finally dissolved.

45. Access to books, etc. The Commissioner, or any officer of the Public Service authorized by him in that behalf, shall at all reasonable times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act and for any such purpose may make extracts from or copies of any such books, documents or papers.

46. Evidence. (1) For the purposes of any proceedings against a person for the recovery of tax, a certificate purporting to be signed by the Commissioner certifying that—

- (a) the employer named in the certificate was liable to tax in respect of the period specified in the certificate;
- (b) an assessment of tax was duly made against him;
- (c) the particulars of the assessment are as stated in the certificate;
- (d) notice of the assessment was duly served upon the employer; or
- (e) the amount specified in the certificate was at the date of the certificate payable as tax by the employer named in the certificate,

shall be prima facie evidence of the matters so certified.

(2) The production of any document or a copy of a document under the hand or purporting to be under the hand of the Commissioner, or purporting to have been issued by the Commissioner (that document or copy purporting to be a notice or a copy of a notice specifying any liability or entitlement of an employer under this Act, or to be a copy of a determination made under this Act), shall be conclusive evidence of the due exercise of any act required by this Act to be done or performed by the Commissioner for the purpose of ascertaining the liability or entitlement so specified or making the determination and (except in proceedings on appeal when it shall be prima facie evidence only) shall be conclusive evidence of the correctness of any calculations upon which that liability or entitlement is ascertained or on which that determination is based.

(3) The production of any document purporting to be under the hand of the Commissioner (that document purporting to be a copy of or extract from any document or return furnished to, or of any document issued by, the Commissioner), shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

(4) In any proceedings against a person for failing or neglecting duly to furnish a return, a certificate in writing purporting to be signed by the Commissioner certifying that the return has not been received from that person by any officer of the Public Service authorized by the Commissioner to receive returns at the place where, under the regulations, the return should have been furnished, shall be prima facie evidence that the defendant has failed or neglected duly to furnish the return.

(5) In any proceedings against a person for failing or neglecting duly to furnish the Commissioner with any information required by the Commissioner in pursuance of section 16 of this Act, a certificate purporting to be signed by the Commissioner certifying that—

- (a) the defendant was so required to furnish the Commissioner with the information of the nature specified in the certificate; and
- (b) the defendant failed or neglected duly to furnish the information as and when required by the Commissioner,

shall be prima facie evidence of the matters so certified.

(6) In any proceedings against a person for failing or neglecting duly to register as an employer, a certificate in writing purporting to be signed by the Commissioner certifying that on a day specified in the certificate a person was not duly registered as an employer shall be prima facie evidence of the matter so certified.

(7) A notification in the Gazette that any person has been appointed as Commissioner, Assistant Commissioner or a Deputy Commissioner shall be conclusive evidence of the appointment.

(8) A certificate, purporting to be under the hand of the Commissioner certifying that on a day specified in the certificate a Deputy Commissioner or another officer of the Public Service named in the certificate was a delegate of the Commissioner under section 4 of this Act to whom such powers and functions of the Commissioner as are specified in the certificate had been delegated on terms, if any, so specified shall be prima facie evidence of the matters so certified.

47. Service of documents by the Commissioner. (1) Any certificate, notice, form or other document required or authorized by this Act to be served or given by the Commissioner shall be deemed to have been duly served or given—

(a) if delivered personally to, or if left at the last known place of abode or business in or out of the State of the person, whether or not he is an employer, on or to whom the certificate, notice, form or document is to be served or given or, in the case of an employer, at his address for service shown on the return last furnished by him with some person apparently in his employment; or

(b) if sent by prepaid letter post, addressed to the person, whether or not he is an employer, on or to whom the certificate, notice, form or document is to be served or given at his last known place of business or abode in or out of the State or, in the case of an employer, at his address for service shown on the last return furnished by him.

(2) Service of a certificate, notice, form or document in accordance with paragraph (b) of subsection (1) of this section shall prima facie be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

(3) The provisions of this section are in addition to and not in derogation of any other provisions of this Act relating to the service of documents or the provisions of section 362 of the *Companies Act* 1961-1971.

48. Service of documents on the Commissioner. Any notice, summons, writ or other process and any return, application, notice, statement or form to be served on the Commissioner for the purposes of this Act may be served by being lodged at the office of the Commissioner with an officer of the Public Service employed in the administration or execution of this Act and authorized in writing by the Commissioner to accept service of documents on his behalf.

49. Institution of prosecutions. (1) Proceedings for an offence against any provision of this Act may be instituted in the name of the Commissioner by any officer of the Public Service employed in the administration or execution of this Act and authorized to institute proceedings on behalf of the Commissioner, and any proceedings

instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.

(2) An officer referred to in subsection (1) of this section may appear on behalf of the Commissioner in any proceedings for an offence against any provision of this Act.

50. Proceedings on prosecutions. All proceedings for offences against this Act shall be heard and determined summarily by a stipendiary magistrate sitting alone.

51. Regulations. (1) The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to—

- (a) the forms to be used for the purposes of this Act;
- (b) the manner of making any application to the Commissioner under this Act;
- (c) the evidence that the Commissioner may require for the purpose of determining whether or not an employer was an employer for part only of a financial year or whether or not a notice under subsection (2) of section 13, or a certificate under subsection (1) of section 14, of this Act should be given;
- (d) the furnishing and signing of returns, applications, notices, statements or forms by or on behalf of employers and deeming any return, application, notice, statement or form signed on behalf of an employer to have been signed by the employer;
- (e) the authentication of any certificate, notice or other document issued for the purpose of this Act;
- (f) the manner of notifying the appointment of a public officer of a company; or
- (g) prescribing any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may impose a penalty not exceeding \$500 for any offence against the regulations.

52. Publication of Regulations. (1) Every regulation made under this Act shall—

- (a) be published in the Gazette;
- (b) upon its publication in the Gazette, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
- (c) subject to this Act, take effect from the date of such publication unless, in the case of any such regulation, a later date is specified in that or any other regulation for its commencement when in such event it shall take effect from that later date; and
- (d) in the case of every regulation, be laid before the Legislative Assembly within fourteen sitting days after such publication if the Legislative Assembly is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any regulation has been laid before it disallowing such regulation or part thereof, that regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further regulation.