

# **Pay-roll Tax Administration Amendment Bill 2004**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the *Pay-roll Tax Administration Amendment Bill 2004*.

#### **Policy Objectives of the Legislation**

To improve pay-roll tax administration by–

- (a) applying the *Taxation Administration Act 2001* to the *Pay-roll Tax Act 1971*; and
- (b) streamlining and clarifying the pay-roll tax returns process.

#### **Reasons for the Bill**

The *Taxation Administration Act 2001* (“TAA”) provides a foundation for improvement in revenue administration by providing a single, modern legislative regime which rationalises separate administrative provisions in the State’s revenue statutes. Separate administrative provisions give rise to duplication and inconsistency and do not always adequately address current revenue administration practice or technological developments.

The TAA is being progressively applied to the revenue statutes administered by the Commissioner of State Revenue (“the Commissioner”). Initially, it was applied to the *Duties Act 2001* on its commencement on 1 March 2002 and was subsequently extended to the *Community Ambulance Cover Act 2003*. In accordance with its policy objective, the TAA is now to be applied to the *Pay-roll Tax Act 1971*. This will ensure greater consistency across taxes, realise improved arrangements for taxpayers and their advisers, and improve administrative efficiency.

The Bill also streamlines and clarifies the pay-roll tax returns system. The streamlined return arrangements will reduce paperwork for employers.

They are also consistent with developments in other States and will therefore be particularly helpful to those employers registered for pay-roll tax for Queensland who are also liable to pay pay-roll tax in other States.

Both the TAA and the improved returns system will facilitate greater use of modern technology as the Office of State Revenue implements the pay-roll tax stage of its IT redevelopment, replacing existing obsolete systems and delivering an e-business interface with clients. The new computer system will also improve the Office's capacity to manage the pay-roll tax revenue base using the more detailed wage information in the new annual return.

The changes made by the Bill are of an administrative nature. No changes are being made to the substantive taxing provisions of the *Pay-roll Tax Act 1971*, including tax rates, entitlement to deductions or exemptions, or the timing of monthly and annual tax payments.

## **Achieving the Objectives**

### **Application of the *Taxation Administration Act 2001* to pay-roll tax**

The Bill provides that the *Pay-roll Tax Act 1971* will be a revenue law for the purposes of the TAA. Under the TAA, the two Acts must then be read together as a single Act. Consequential amendments are also being made to the *Pay-roll Tax Act 1971* to remove administrative provisions which will no longer be required because of the application of the TAA.

The Commissioner of State Revenue is responsible for the administration of the revenue laws to which the TAA applies and will replace the Commissioner of Pay-roll Tax as the person responsible for administration of the *Pay-roll Tax Act 1971*. (This is a change in title only as, under the *Pay-roll Tax Act 1971*, the Commissioner of Pay-roll Tax is the person holding office as the Commissioner of State Revenue appointed under the TAA.)

The following summary outlines the main administration components of the TAA in their application to pay-roll tax.

#### Assessments of tax

The TAA establishes a standard regime for the assessment of tax liability arising under a revenue law. The making of an assessment underpins tax liability and is the basis on which rights under the TAA flow such as rights of review and refund.

Assessments are made either under the self assessment process or by the Commissioner. However, all self assessments are deemed to be Commissioner assessments. The TAA also provides for the issue of default

assessments and reassessments. These assessments largely equate to the current circumstances in which the Commissioner can issue assessments under the *Pay-roll Tax Act 1971*.

#### Payments of tax

Under the TAA, for self assessments such as self assessments of pay-roll tax, the tax must be paid on the date the return for a self assessment is required to be lodged. This is consistent with existing requirements in the *Pay-roll Tax Act 1971* for the payment of pay-roll tax.

#### Refunds of tax and other amounts

The TAA establishes a standard regime for refunds under a revenue law, linking entitlement to a refund to a reassessment of tax decreasing liability or where an assessment of tax is simply overpaid. Refunds of pay-roll tax under the TAA will therefore be limited to these circumstances. The period within which a refund may be made corresponds to the five year period for making a reassessment or, in the case of simple overpayments, five years from the date of the overpayment.

The Bill also provides for refunds where the amounts paid or payable by an employer for periodic liability (usually monthly) are greater than the employer's annual or final liability. This is consistent with the annual adjustment process for which the *Pay-roll Tax Act 1971* presently makes provision.

The TAA will also enable a refund amount to be applied by the Commissioner to a current liability of the employer for pay-roll tax or under another revenue law, or to hold the amount to be applied against a liability expected to arise within 60 days. The Bill also provides that if an employer is a member of a group, a refund amount may be applied against current or future pay-roll tax liabilities of other group members.

#### Unpaid tax interest

The TAA provides for the imposition of unpaid tax interest (UTI) to encourage payment of tax on time and to compensate the State for periods during which tax is unpaid. UTI is imposed on a daily basis from the time when the tax was initially due until the tax is paid.

UTI accrues if either-

- (a) payment is not made on lodgment of a return or by the due date of an assessment issued by the Commissioner;
- (b) based on the facts at the time of payment, tax was underpaid; or
- (c) liability is subsequently reassessed upwards.

The Commissioner may fully or partially remit UTI.

### Penalty tax

The TAA establishes a standard penalty tax regime as an administrative sanction where taxpayers have failed to comply with their tax obligations. Penalty tax may be imposed in the following cases.

- (a) A default assessment is issued because a self assessment has not been made or the taxpayer has not complied with an information or lodgment requirement issued by the Commissioner.
- (b) There is a reassessment of a default assessment.
- (c) On a reassessment, the primary tax assessed increases.

The maximum rate of penalty tax is 75% of the amount of primary tax assessed or reassessed, or of the increase in primary tax reassessed.

The Commissioner may also fully or partially remit penalty tax.

Penalty tax may be increased by up to 20% if either-

- (a) the taxpayer has hindered or prevented the Commissioner from becoming aware of the nature and extent of the tax liability; or
- (b) a taxpayer becomes aware that an assessment of the taxpayer's tax liability was made for an amount lower than it should have been and the taxpayer fails to notify the Commissioner.

### Objections and appeals against assessments

The TAA enables taxpayers to seek a review by the Commissioner of an assessment, including where the tax liability is self assessed, by lodging an objection. It also allows a taxpayer to seek review by a single judge of the Supreme Court where a taxpayer is dissatisfied with the Commissioner's decision on objection.

Any decisions or determinations leading up to or forming part of the making of an assessment of pay-roll tax will no longer be subject to separate review. However, these decisions or determinations will be reviewable as part of the assessment to which the decision or determination relates. That is, the decision or determination will be reviewable once it has taxation consequences for the employer, such as upon lodgment of a return and the deemed making of an assessment.

The TAA does not provide any separate rights of review under the *Judicial Review Act 1991* where the TAA provides review rights. However, where there are no rights of objection or appeal provided by the TAA, the *Judicial*

*Review Act 1991* continues to apply except for limited classes of decisions declared in the TAA to be non-reviewable.

### Investigations

The standard powers of investigation in the *Taxation Administration Act 2001* will apply to pay-roll tax including the power of the Commissioner or an investigator to-

- (a) require the provision of information or documents;
- (b) require a person to attend and provide information or documents;
- (c) enter places and exercise various information gathering powers;
- (d) seize or retain documents or other things; and
- (e) authorise, conduct, or assist in the conduct of, interstate investigations.

### Confidentiality

The TAA establishes an obligation of confidentiality for officials in certain circumstances while specifying the circumstances in which confidential information may be disclosed, as well as the consequences for disclosing information in breach of the provisions.

### Record keeping

Under the TAA, employers are generally required to keep records that enable liability to tax to be determined until the later of 5 years after the record was made or obtained or 5 years after completion of the transaction or matter to which the record relates.

### Enforcement and legal proceedings

The TAA establishes a number of offences of general application to the revenue laws to which it applies. In addition, where the TAA or those revenue laws impose obligations, specific offences are created for failure to comply. The TAA also specifies the arrangements for the institution and conduct of proceedings, prosecution actions, evidentiary matters, the time within which actions may be brought, how actions may be instituted and the orders which may be made by a court.

Application of the TAA to pay-roll tax will generally result in an increase in the penalty for commission of an offence to 100 penalty units, reflecting current standards relating to penalties under revenue laws.

An additional penalty for second-time offences will also apply.

The period for commencing prosecution actions will be standardised to 5 years after commission of an offence. This standard period accords with the record retention period.

The TAA imposes an obligation on executive officers of a corporation to ensure compliance with the tax laws. This encourages officers who can influence a corporation's conduct to ensure that all reasonable steps are taken to ensure compliance by the corporation. Also, partners or members will be taken to have committed any offence committed by a partnership or unincorporated association, subject to certain defences.

#### Giving and lodging documents

The TAA clarifies how and when documents must be given to or by the Commissioner. Additional methods of service can also be prescribed by regulation.

#### **Streamlining and clarification of the pay-roll tax returns system**

Under the streamlined and clarified returns system established by the Bill, employers will continue to work out and pay their pay-roll tax periodically during the financial year (usually monthly). However, existing periodic returns, containing details of wages paid during the period, will change to a simple pre-printed return in the form of a payment slip which will not require wage details. No paperwork will be required for employers who pay their periodic pay-roll tax liability electronically.

At the end of the financial year, all employers will be required to lodge an annual return with a detailed breakdown of the year's wages. Employers will be required to self assess their annual liability, and the annual return will be required to be accompanied by payment of any tax shortfall for the year. Where there is a refund payable, no application for the refund will need to be made.

Employers will also be required to lodge a final return after a change of status, such as upon ceasing to employ or being liable to pay taxable wages, becoming or ceasing to be a group member, or becoming or ceasing to be a designated group employer for a group. The final return is a self assessment of the employer's final liability for tax on taxable wages for the period up to the change of status (after taking into account tax paid or payable with periodic returns). Employers will pay any final liability with the final return or will be entitled to a refund where the tax paid or payable during the final period exceeds the final liability.

#### **Transitional arrangements**

Provisions of the TAA or the *Pay-roll Tax Act 1971* as amended by the Bill, of an administrative nature will apply from the commencement date of the Bill regardless of whether or not the relevant liability for pay-roll tax arose, or the relevant act or omission occurred, before or after that date. This will enable the new, more efficient, administrative arrangements to apply as broadly as possible. For example, after commencement of the Bill the registration provisions as amended by the Bill will apply in relation to the registration of an employer from a date before commencement of the Bill where the employer is not registered.

However, the TAA and the *Pay-roll Tax Act 1971* as amended by the Bill will not apply to liability for pay-roll tax arising, or acts or omissions occurring, before the commencement date of the Bill where that would affect the substantive rights, liabilities or obligations of an employer. The provisions of the *Pay-roll Tax Act 1971* as in force at the relevant time will continue to apply in these cases. Examples include provisions governing the calculation of tax liability, rights of review of decisions or assessments made or issued before the commencement date and provisions imposing additional tax or giving rise to an entitlement to a refund in relation to events occurring before that date.

Consistent with these principles, the Bill also contains transitional provisions dealing with the transitional year, that is, the financial year in which the Bill will commence.

### **Administrative costs**

Implementation by the Office of State Revenue of the arrangements established by the Bill will involve changes to pay-roll tax business processes, development of new publications, client education initiatives and staff training. These activities will be undertaken within the Office operating budget.

### **Fundamental Legislation Principles**

1. The Bill confers the following discretions on the Commissioner.
  - (a) Under section 14 *Pay-roll Tax Act 1971* as amended by the Bill, the Commissioner may exempt an employer from the requirement to lodge periodic returns where it is considered that no tax will be payable by the employer or, if paid, would be refunded. This minimises compliance costs for employers in these cases but does not exempt the employer from pay-roll tax, though it may postpone the time for payment. For example, an

employer may employ workers on a seasonal basis so that it is more efficient for one annual return to be lodged for the year. This discretion currently exists in the *Pay-roll Tax Act 1971*.

- (b) Most employers are required to lodge periodic returns (usually monthly). However, for administrative efficiency, assessing practice on audit has been to assess an employer's annual liability rather than each of the periodic liabilities and the annual adjustment amount where the employer failed to lodge periodic returns for the year. Section 22 *Pay-roll Tax Act 1971* as amended by the Bill reflects this practice by conferring the discretion on the Commissioner to assess on an annual basis rather than for each periodic return period and an annual adjustment amount, even where the liability for the year arose prior to commencement. This is beneficial for the employer as any interest or penalty tax would accrue from a later date, namely, the due date for payment of the annual liability at year end.
- (c) Despite the fact that an employer was exempted from lodging periodic returns under section 14 *Pay-roll Tax Act 1971* as amended by the Bill, or has been assessed on an annual, rather than a periodic basis under section 22 *Pay-roll Tax Act 1971* as amended by the Bill, the Commissioner may revert to assessing the employer's periodic liabilities for the year. An assessment on this basis can be made under section 23 *Pay-roll Tax Act 1971* as amended by the Bill. As this may render an employer liable for UTI or penalty tax from an earlier date, the discretion can be exercised only in the following circumstances.
  - (i) The employer failed to notify the Commissioner that their taxable wages have exceeded the statutory thresholds for 3 consecutive months or the employer was exempted from lodging periodic returns or authorised to lodge periodic returns for periods other than a month on the basis of false or misleading information provided by the employer. In the absence of the ability to reassess in these cases, the employer could benefit from their non-compliance because UTI could not be imposed until after the end of the financial year.
  - (ii) Where the Commissioner assessed under section 22 on an annual, rather than a periodic basis. In these cases, the employer's liability to pay-roll tax would be restored to



what it would have been but for the assessment election under that section.

- (d) Under section 41G *Pay-roll Tax Act 1971* as amended by the Bill, the Commissioner may require payment of an administrative penalty for offences created by the Bill. Administrative penalties are common in revenue legislation at both the State and Commonwealth levels as they provide an administratively efficient alternative to prosecution. Also, for many breaches, administrative penalties are a more appropriate sanction.
- (e) Under section 11CJ *Pay-roll Tax Act 1971* as amended by the Bill, a designated group employer may nominate other group members who should share in any excess deduction and the order in which they should share. In the absence of a nomination, the Commissioner may decide these matters. This discretion ensures that the benefit of the excess deduction is not lost to the other group members.
- (f) Under section 12A *Pay-roll Tax Act 1971* as amended by the Bill, the Commissioner may, without application being made by an employer, register an employer who meets the criteria for registration. Employers liable for pay-roll tax are required to apply for registration and it is an offence to fail to do so. The power to register an employer who fails to apply for registration enables the Commissioner to better administer the pay-roll tax revenue base.
- (g) Under sections 9 and 9F *Pay-roll Tax Act 1971* as amended by the Bill, the Commissioner may determine the periodic deduction of an employer who either employs outside Queensland or is the designated employer of a group. While these employers will usually self assess their deduction based on a statutory formula using an estimate of wages for the year, the discretion enables the Commissioner to ensure that the amount of the fixed deduction is appropriate for the employer and thereby protect the revenue base. This discretion currently exists in the *Pay-roll Tax Act 1971*.
- (h) Under sections 11B and 11CB *Pay-roll Tax Act 1971* as amended by the Bill, the Commissioner may treat an employer as having paid wages for the whole of a financial year, or for the whole of a final period, where wages were not paid for part of that year or period due to the nature of their trade or business. In working out liability to pay-roll tax or entitlement to a refund for a year or a

final period, an employer may be entitled to a deduction from their taxable wages. The amount of the deduction will be reduced where the employer did not pay wages for the whole of the financial year or period. The discretion assists employers by allowing the full benefit of the statutory deduction for the financial year or final period to be claimed. Seasonal employers, such as farmers, may otherwise be required to pay more pay-roll tax than an employer who pays wages throughout the whole year simply due to the nature of their work. This discretion currently exists in the *Pay-roll Tax Act 1971*.

- (i) Under sections 13A and 13B *Pay-roll Tax Act 1971* as amended by the Bill, the Commissioner may extend the time within which an employer is required to lodge a periodic return or authorise periodic return periods of other than a month (e.g. quarterly or six-monthly). This allows the Commissioner to tailor the periodic return obligation to meet the particular needs of employers for whom monthly returns and payments would be onerous. For example, a fruit grower may pay wages for only a few months a year. Adjusting the return periods reduces compliance costs for these employers. This discretion currently exists in the *Pay-roll Tax Act 1971*.
- (j) Section 17 *Pay-roll Tax Act 1971* as amended by the Bill prohibits an employer from making a reassessment unless, among other things, the employer is required or permitted under the employer's notice of registration. Under section 24 *Taxation Administration Act 2001*, a self assessor may make a reassessment only if required or permitted under a revenue law. Section 12B *Pay-roll Tax Act 1971* as amended by the Bill provides that an employer's notice of registration must specify the date of registration, the types of reassessments the employer is required or permitted to make and whether the employer is permitted to remit UTI or penalty tax. Also, section 12C *Pay-roll Tax Act 1971* as amended by the Bill confers on the Commissioner the power to amend an employer's registration by notice given to the employer. The discretion to require employers to make reassessments and remit UTI and penalty tax and the power to amend a notice of registration provide options for supporting and developing the self assessment framework.
- (k) Under section 41 *Pay-roll Tax Act 1971* as amended by the Bill, the Commissioner may offset amounts to be refunded to the employer against all tax law liabilities owing by that employer.

Where the taxpayer is a member of a group, the refund amount may also be offset against amounts of pay-roll tax owing by another member of the group. The grouping of employers for pay-roll tax is necessary to protect the pay-roll tax revenue base. For the same reasons that employers have been grouped, it is appropriate that refunds of pay-roll tax owed to different group members are able to be offset against liabilities of pay-roll tax of other group members as if they were one taxpayer. The offset provision is consistent with other pay-roll tax consequences of grouping employers, namely, taking account of group wages for working out the designated group employer's periodic, annual or final deduction, denial of these deductions to other group members, the allocation of any excess deduction of the designated group employer to other group members and the joint and several liability of group members for any unpaid annual liability or final liability of the designated group employer.

2. While the Bill contains transitional provisions, situations may be identified in implementing the changes made by the Bill where further transitional provisions are required. Section 80 of the Bill therefore provides that transitional regulations may be made to better facilitate transition from the existing provisions of the *Pay-roll Tax Act 1971*. Transitional regulations may operate retrospectively from as early as the commencement day for the Bill. This power is necessary to ensure a smooth transition to the new arrangements. The scope of the power is limited to the making of regulations about transitional issues where the Bill does not make provision or sufficient provision. Also, transitional regulations and the power to make these regulations will expire five years after the commencement day for the Bill. A period of five years after commencement of the Bill is necessary to ensure appropriate provision can be made for any issue that may be identified in the course of audit of an employer's pay-roll tax liability.
3. The remaining provisions of the *Pay-roll Tax Administration Amendment Bill 2004* are not considered to raise fundamental legislative principle issues.

## **Consultation**

The draft Bill and Consultation Paper summarising the proposed changes were published on the Office of State Revenue website during a four-week period in July 2004. Every employer registered for pay-roll tax purposes, as well as the main accounting, legal, taxation and pay-roll representative

bodies, were advised in writing by the Office of State Revenue of the public consultation process and how to obtain copies of the Bill and Consultation Paper.

## **Notes on Provisions**

### **Part 1 Preliminary**

#### **Short title**

Clause 1 cites the short title of the Act as the *Pay-roll Tax Administration Amendment Act 2004*.

#### **Commencement**

Clause 2 provides that the Act will commence on a date to be fixed by proclamation.

### **Part 2 Amendment of *Pay-roll Tax Act 1971***

Clause 3 provides that Part 2 amends the *Pay-roll Tax Act 1971*.

Clause 4 amends the long title of the *Pay-roll Tax Act 1971* to reflect that administrative matters will be dealt with principally by the *Taxation Administration Act 2001*.

Clause 5 relocates section 3(1) Interpretation to the Schedule as the dictionary, and omits certain definitions.

Clause 6 inserts new sections 3C to 3F.

Section 3C defines change of status and sets out when a change of status happens. Where there is a change of status, the employer is required by new section 14B to lodge a final return.

Section 3D defines final period. Liability for pay-roll tax on a change of status is worked out on taxable wages paid or payable during the final period.

Section 3E provides that a note in the Act forms a part of the Act.

Section 3F explains the relationship of the Bill to the Taxation Administration Act 2001.

Clause 7 omits Part 2 as the administrative matters covered by those provisions are dealt with by the *Taxation Administration Act 2001*.

Clause 8 inserts a new section 7A to clarify when liability to pay-roll tax arises.

Clause 9 omits section 8A (1D) as the administrative matter covered by that provision is dealt with by the *Taxation Administration Act 2001*.

Clause 10 inserts a new Part 3 Division 3 - Periodic liability

Under the *Pay-roll Tax Act 1971* as amended by the Bill, employers who are registered or required to register for pay-roll tax will self assess and pay their pay-roll tax liability periodically (usually monthly) during the financial year. The liability for each period is called a *periodic liability*. The periodic liability of an employer is worked out by applying the rate of tax to their taxable wages for the period.

However, an employer may be entitled to a deduction, called a periodic deduction, from their taxable wages. Group members other than the designated group employer are not entitled to claim a periodic deduction.

There are two types of periodic deduction -

- (a) an *actual periodic deduction*; and
- (b) a *fixed periodic deduction*.

An employer who does not pay interstate wages and is not a member of a group may be entitled to an actual periodic deduction calculated in accordance with the relevant formula in the *Pay-roll Tax Act 1971* as amended by the Bill. This deduction, calculated each period, is based on actual wages for the period. However, that employer may still be entitled to a fixed periodic deduction in certain circumstances e.g. if the employer has previously paid interstate wages.

A non-group employer who pays interstate wages and a designated group employer may be entitled to a fixed periodic deduction. This deduction is calculated in accordance with the relevant formula in the

*Pay-roll Tax Act 1971* as amended by the Bill but is based on an estimate of wages for the financial year. The estimate is made on a day called the *calculation day* for the relevant period. There are six possible calculation days, for example, 1 July of the financial year, when the periodic return period changes or on a change of more than 30% in their Australian wages' estimate for the financial year. Often, there is only one calculation day (1 July) for the employer each year so that the fixed periodic deduction need only be calculated annually on that day and applies for each month of the financial year. If there is more than one calculation day for a financial year, the fixed periodic deduction must be recalculated on each day.

The Commissioner may also determine an employer's fixed periodic deduction.

Part 3 Division 3 Subdivision 1 (Periodic liability – Employer other than the DGE for a group) comprises new sections 8D to 8H.

Section 8D specifies that Subdivision 1 applies to an employer required to lodge periodic returns but who is not the designated group employer for a group. The periodic liability of a designated group employer is worked out under Part 3 Division 3 Subdivision 2.

Sections 8E – 8G define terms used in working out the periodic liability of these employers.

Section 8H sets out how periodic liability is worked out for these employers. The periodic liability is worked out by applying the appropriate rate of pay-roll tax to taxable wages paid or payable by the employer during the period. Employers who are not members of a group may be entitled to a periodic deduction – either actual or fixed - from their taxable wages.

Clause 11 omits section 9 and inserts a new section 9 which allows the Commissioner to determine the fixed periodic deduction of an employer entitled to a fixed periodic deduction under Part 3 Division 3 Subdivision 1. The new section provides for the notice of the determination to specify the periodic return periods to which the determination will apply, and allows the Commissioner to revoke the determination.

Clause 12 inserts Part 3 Division 3 Subdivision 2 (Periodic liability – DGE for a group) comprising new sections 9A to 9F.

Section 9A specifies that Subdivision 2 applies to an employer who is the designated group employer for a group.

Sections 9B to 9D define terms used in working out the periodic liability of a designated group employer.

Section 9E sets out how periodic liability is worked out for these employers. The periodic liability is worked out by applying the appropriate rate of pay-roll tax to taxable wages paid or payable by the employer during the period. A designated group employer may be entitled to a fixed periodic deduction from their taxable wages.

Section 9F allows the Commissioner to determine the fixed periodic deduction of a designated group employer. The new section provides for the notice of determination to specify the periodic return periods to which the determination will apply, and allows the Commissioner to revoke the determination.

Clause 13 renumbers and relocates sections 10 and 11 as sections 8B and 8C.

Clause 14 inserts headings for new Part 3 Division 4 – Annual liability.

Under the *Pay-roll Tax Act 1971* as amended by the Bill, employers who are registered or required to register for pay-roll tax will lodge an annual return at the end of each financial year containing details of taxable wages paid or payable during the year. The return is a self assessment of either -

- (a) the *annual liability*; or
- (b) the *annual refund amount*.

There is an annual liability if the amount of pay-roll tax payable by the employer for the financial year – called the *annual pay-roll tax amount* – exceeds the employer's periodic liability during the year. The annual liability is the amount of the excess - called the *annual adjustment amount*. For an employer who was not required to lodge a periodic return during the year, the annual liability is simply the annual pay-roll tax amount for the year. The amount of the annual liability is payable by the employer with the annual return.

There is an annual refund amount if the employer's annual pay-roll tax amount is less than their periodic liability during the year. The annual refund amount is the amount of the difference.

An employer's annual pay-roll tax amount is worked out by applying the rate of tax to their taxable wages for the financial year. However, an employer may be entitled to a deduction, called an *annual deduction*, from their taxable wages. The deduction is calculated in accordance

with the relevant formula in the *Pay-roll Tax Act 1971* as amended by the Bill. Group members other than the designated group employer are not entitled to claim an annual deduction.

The annual deduction of a designated group employer is worked out based on the taxable wages of all group members but is deducted from the annual wages of the designated group employer only. As this can result in the deduction exceeding the wages of the designated group employer, provision is made in the Bill (in new sections 11CH to 11CM) for any excess deduction to be transferred to other group members in working out their annual pay-roll tax amount for the year.

An employer's annual wages, periodic liability and annual deduction are worked out without regard to any wages, liability or days for that part of the financial year that was part of a final period. This prevents double taxing. However, where the Commissioner makes an original assessment or reassessment of the annual liability of an employer who is not a member of a group then the Commissioner must, where the employer was also not a member of a group during the final period, take into account these details in certain circumstances. This ensures that the employer's liability for pay-roll tax is not increased as a result of disregarding the final period.

Clause 15 inserts a new section 11AA which specifies that Part 3 Division 4 Subdivision 1 (relating to annual liability) applies to an employer who is required to lodge an annual return for a financial year, other than the designated group employer for a group. The annual liability of a designated group employer is worked out under Part 3 Division 4 Subdivision 2.

Clause 16 amends section 11A. Sections 11A(1) to (2A) are omitted and replaced with a new section 11A(1) that defines terms used in working out the annual liability of an employer, other than a designated group employer. Section 11A(3) is renumbered as section 11A(2), and new sections 11A(4) and (5) (renumbered as sections 11A(3) and (4)) are inserted. Section 11A(2) (as renumbered) allows the Commissioner to treat an employer who is not the designated group employer for a group as an employer for the whole of the financial year where they didn't pay wages for any part of that year due to the nature of their trade or business. Sections 11A(3) and (4) (as renumbered) limit the operation of section 11A(2) so that, in effect, any part of the financial year that is part of a final period is disregarded.

Clause 17 omits sections 11B and 11C and inserts new sections 11B to 11CM.



Section 11B sets out how the annual liability for an employer other than the designated group employer for a group is worked out.

Section 11BA sets out how the annual refund amount for an employer other than the designated group employer for a group is worked out. The employer is not required to make a refund application. However entitlement to a refund lapses 5 years after the making of the assessment of the annual liability. Where there is any reassessment of the employer's annual liability, any entitlement to a refund may only arise under the *Taxation Administration Act 2001*.

Sections 11BB to 11BE are in Part 3 Division 4 Subdivision 2 relating to annual liability of an employer who is the designated group employer for a group.

Section 11BB provides that Part 3 Division 4 Subdivision 2 applies to an employer who is the designated group employer for a group.

Section 11BC defines terms used in working out the annual liability of a designated group employer.

Section 11BD sets out how the annual liability is worked out for designated group employers. If the annual liability of the designated group employer is not paid, all members of the group are jointly and severally liable to pay that amount.

Section 11BE sets out how a designated group employer's annual refund amount is worked out. The employer is not required to make a refund application. However, entitlement to a refund lapses 5 years after the making of the assessment of the annual liability. Where there is any reassessment of the employer's annual liability, any entitlement to a refund may only arise under the *Taxation Administration Act 2001*.

Sections 11C to 11CG are in Part 3 Division 5 Subdivision 1 and Subdivision 2– Final Liability.

Under the *Pay-roll Tax Act 1971* as amended by the Bill, employers who are registered or required to register for pay-roll tax are required to lodge a final return for a final period (as defined in new section 3D) where a change of status happens (as provided for in new section 3C).

The return is a self assessment of either -

- (a) the *final liability*; or
- (b) the *final refund amount*.

There is a final liability if the amount of pay-roll tax payable by the employer for the final period– called the *final pay-roll tax amount* –

exceeds the employer's periodic liability for the final period. The final liability is the amount of the excess - called the *final adjustment amount*. For an employer who was not required to lodge a periodic return during the final period, the final liability is simply the final pay-roll tax amount for the period. The amount of the final liability is payable by the employer with the final return.

There is a final refund amount if the employer's final pay-roll tax amount is less than their periodic liability for the final period. The final refund amount is the amount of the difference.

An employer's final pay-roll tax amount is worked out by applying the rate of tax to their taxable wages for the final period. However, an employer may be entitled to a deduction, called a *final deduction*, from their taxable wages. The deduction is calculated in accordance with the formula in the *Pay-roll Tax Act 1971* as amended by the Bill. Group members other than the designated group employer are not entitled to claim a final deduction.

The final deduction of a designated group employer is worked out based on the taxable wages of all group members but is deducted from the final wages of the designated group employer only. As this can result in the deduction exceeding the designated group employer's wages, provision is made in the Bill (in new sections 11CH to 11CM) for any excess deduction to be transferred to other group members in either working out their annual pay-roll tax amount for the year or, if the group ceases, their final pay-roll tax amount.

Section 11C specifies that Part 3 Division 5 Subdivision 1 applies to an employer who is required to lodge a final return and who is not the designated group employer for a group. The final liability of a designated group employer is worked out under Part 3 Division 5 Subdivision 2.

Section 11CA defines terms used in working out the final liability of employers who are not the designated group employer for a group.

Section 11CB sets out how final liability is worked out for employers who are not the designated group employer for a group. The Commissioner may treat an employer who is not the designated group employer for a group as an employer for the whole of the final period where they didn't pay wages for any part of that final period due to the nature of their trade or business.

Section 11CC sets out how the final refund amount for an employer other than the designated group employer for a group is worked out. The

employer is not required to make a refund application. However, entitlement to a refund lapses 5 years after the making of the assessment of the final liability. Where there is any reassessment of the employer's final liability, any entitlement to a refund may arise only under the *Taxation Administration Act 2001*.

Section 11CD specifies that Part 3 Division 5 Subdivision 2 applies to a designated group employer.

Section 11CE defines terms used in working out the final liability of a designated group employer.

Section 11CF sets out how the final liability is worked out for designated group employers. If the final liability of the designated group employer is not paid, all members of the group are jointly and severally liable to pay that amount.

Section 11CG sets out how a designated group employer's final refund amount is worked out. The employer is not required to make a refund application. However, entitlement to the refund lapses 5 years after the making of the assessment of the final liability. Where there is any reassessment of the employer's final liability, any entitlement to a refund may arise only under the *Taxation Administration Act 2001*.

Sections 11CH to 11CM are in Part 3 Division 6 – Sharing of excess deduction by group members.

Section 11CH contains defined terms used in Part 3 Division 6 relating to sharing of any excess deduction (being either an annual deduction or a final deduction) by group members.

Section 11CI defines *excess deduction*.

Section 11CJ allows the designated group employer to nominate the other group members who should share from any excess deduction, and the order in which they should share.

Section 11CK allows the Commissioner to decide which of the group members should share the excess deduction and the order in which they should share, where the designated group employer does not make a nomination under section 11CJ.

Section 11CL provides for assessment of the annual liability of the nominated group members so as to allow those group members to share in an excess deduction in relation to the designated group employer's annual or final liability. The annual liability of a nominated group member is worked out under this provision by first allowing the excess

deduction to be deducted from their wages for the year. However, a nominated group member is also only able to receive the benefit of any excess deduction to the extent of its own taxable wages.

Section 11CM applies where the group ceases to exist during the financial year. It provides for assessment of the final liability of the nominated group members to allow those group members to share in an excess deduction in relation to the designated group employer's final liability. The final liability of a nominated group member is worked out under this provision by first allowing the excess deduction to be deducted from their wages for the final period. However, a nominated group member is also only able to receive the benefit of any excess deduction to the extent of its own taxable wages.

Clause 18 inserts into new Part 4 Division 1 (relating to registration) a new section 11F which sets out the criteria for registration of employers.

Clause 19 amends section 12. Sections 12(1) and (2) are omitted and replaced with new sections 12(1) and (2). These new subsections require employers to apply for registration in the approved form within seven days after the end of the month in which they meet the criteria for registration. The remaining subsections of section 12 are renumbered.

Clause 20 inserts new sections 12A – 12D dealing with registration of employers.

Section 12A allows the Commissioner, without application being made, to register a person who meets the criteria for registration.

Section 12B requires the Commissioner to give a notice of registration to persons registered as an employer. The section also sets out the details that must be included in notices of registration.

Section 12C allows the Commissioner to amend an employer's registration by notice given to the employer stating the particulars of the notice of registration that are amended.

Section 12D requires the Commissioner to cancel a notice of registration in certain circumstances.

Clause 21 omits section 13 and replaces it with new sections 13 to 13C.

Section 13 defines the term *relevant employer* used in Part 4 Division 2 (relating to returns).

Section 13A requires relevant employers to lodge a return for taxable wages paid or payable for a periodic return period no later than seven days after the end of that period. The Commissioner is able to extend the

time within which the employer is required to lodge the return in certain circumstances. The return is to be in the approved form and state the employer's periodic liability for the period.

Section 13B states that a periodic return period is the period starting on the first day and ending on the last day of a month. However the Commissioner is able to authorise periodic return periods of other than a month (e.g. quarterly or six-monthly), but not more than annually, if it is considered that lodgment of monthly returns would be unduly onerous. The Commissioner may also revoke that authorisation.

Section 13C applies where an employer makes a payment of periodic liability for a periodic return period by an electronic transfer of funds. By virtue of section 13C(2), the employer is deemed to have made a self assessment of their periodic liability for that periodic return period under section 14(a) *Taxation Administration Act 2001*. Section 13C(3) provides that the amount of the payment is taken to be the amount of that self assessment. Like any self assessment, the assessment arising as a result of the operation of section 13C can be reassessed.

Clause 22 amends section 14 and its section heading. Section 14(1) is omitted and replaced with a new section 14(1) to (1A). Section 14(1) allows the Commissioner to exempt employers from lodging periodic returns in certain circumstances. The remaining subsections are renumbered.

Clause 23 inserts new sections 14A and 14B dealing with annual and final returns.

Section 14A imposes an obligation on relevant employers to lodge a return for taxable wages paid or payable for a financial year no later than 21 days after the end of the year. The return is to be in the approved form and state the employer's annual liability or annual refund amount for the year. The return must also include details of wages paid or payable for the year. If the employer is not the designated group employer for a group, wages paid or payable for a final period are not to be included. If the employer is the designated group employer for a group, wages paid or payable by members of the group for that part of the financial year that the employer was designated group employer for the group are to also be included. As a member of the group, the designated group employer must also include its own wages for the designated period in the annual return. Section 14A(4) exempts employers from the requirement to lodge an annual return for a financial year in certain circumstances.

Section 14B imposes an obligation on relevant employers on a change of status to lodge a return for taxable wages paid or payable for the final period no later than 21 days after the change of status. The return is to be in the approved form and state the employer's final liability or final refund amount for the final period. The return must also include details of wages paid or payable for the final period. If the employer is the designated group employer for a group, wages paid or payable by members of the group during the final period are also to be included. As a member of the group, the designated group employer must also include its own wages for the final period in the final return

Clause 24 omits section 16 as the administrative matters covered by that provision are dealt with by the *Taxation Administration Act 2001*.

Clause 25 amends section 16I and its heading. Section 16I(1) and (1A) are amended by omitting the reference to nomination of a deduction amount. The deduction will be calculated in accordance with the relevant formula in the *Pay-roll Tax Act 1971* as amended by the Bill. Sections 16I (3) to (7) are omitted.

Clause 26 omits sections 16J to 16L as the matters dealt with by those provisions are contained in the sections of the Bill dealing with annual liability and final liability.

Clause 27 omits Part 5 and replaces it with a new Part 5 - Provisions about assessments - sections 17 to 23.

Section 17(1) sets out the circumstances in which a registered employer is permitted to make a reassessment of a periodic, annual or final liability. However, section 17(2) provides that a registered employer must not make a self assessment of a reassessment made by the Commissioner.

Section 18 requires a periodic liability to be reassessed where a determination or revocation of a determination by the Commissioner of an employer's periodic deduction would change the amount of the liability for the period. Similarly, where the reassessed periodic liability would change the amount of an annual or final liability, the annual or final liability must be reassessed.

Section 19 requires the Commissioner to reassess the annual liability of an employer who is not a member of a group in certain circumstances. Under new section 11B, an employer's annual liability is worked out without regard to any wages, liability or days for that part of the financial year that was part of a final period. However, where the employer was also not a member of a group during the final period, the Commissioner

must reassess the annual liability to take these details into account in certain circumstances. This allows the full benefit of the deduction for those parts of the financial year that the employer was not a member of a group to be claimed.

Section 20 requires a periodic liability to be reassessed where a change of the designated group employer for a group would change the amount of the liability for the period. Also, where the reassessed periodic liability would change the amount of an annual or final liability, the annual or final liability must be reassessed.

Section 21 requires a periodic liability to be reassessed where the making or revocation of an order by the Commissioner excluding a person from a group would change the amount of the liability for the period. Also, where the reassessed periodic liability would change the amount of an annual or final liability, the annual or final liability must be reassessed.

Section 22 provides that the Commissioner may, where an employer has been required to lodge periodic returns, issue an assessment of annual or final liability as though the employer had not been liable to lodge periodic returns. If an assessment is made in accordance with this provision, the Commissioner is not prevented from subsequently making a reassessment in accordance with section 23 i.e. once again as if the employer had been required to lodge periodic returns.

*Example*

*An audit uncovers that an employer has not lodged periodic returns for periodic return periods in a year as required. The Commissioner may make an assessment for the employer's annual liability for the year as if the employer had not been required to lodge those periodic returns. The Commissioner is not required to issue separate assessments for each of the periodic return periods.*

Section 23 provides that the Commissioner may, where an employer has been exempt from lodging periodic returns or authorised to lodge periodic returns for periods other than a month, issue an assessment of the periodic liability as though the employer had been liable to lodge monthly periodic returns. Subsection (5) limits the power under section 23 to assess periodic liability to cases where the employer has contravened new section 41D or gave false or misleading information to the Commissioner in contravention of sections 122 or 123 *Taxation Administration Act 2001* that was relied on by the Commissioner in granting an exemption under section 14 or authorising different return

periods under section 13B. In addition, the power can be exercised where the Commissioner has made an assessment or reassessment mentioned in section 22(2) or (4).

*Example 1*

*The Commissioner exempted an employer from lodging periodic returns for periodic return periods during the year on the basis of information provided by the taxpayer about the level of wages that would be payable by the employer throughout the year. Upon audit, it is discovered that the employer had not declared the true estimated level of wages to the Commissioner. The Commissioner may make an assessment of the employer's periodic liability for each of the periodic return periods throughout the year, as if the employer had not been granted the exemption, so that interest and penalties accrue in respect of any pay-roll tax that would have accrued for those periods throughout the year.*

*Example 2*

*Following on from the Example for section 22, further information obtained discloses that there were additional wages paid or payable for the year. The Commissioner may exercise the power in section 23 to reinstate the employer's periodic liability and reassess the annual liability. Alternatively, the Commissioner may reassess the employer's annual liability for the year on the basis that the employer had not been required to lodge any periodic returns.*

Clause 28 renumbers and relocates section 37 to section 42A in part 8, division 3.

Clause 29 omits Parts 6 and 7 as the administrative matters covered by those Parts are dealt with by the *Taxation Administration Act 2001*.

Clause 30 omits section 41 and inserts new sections 41 to 41H into new Part 8 Divisions 1 to 3.

Division 1 – Refund provisions - contains new sections 41 to 41B.

Section 41 allows the Commissioner to offset an annual refund amount or a final refund amount against certain amounts owing. The Commissioner may offset an entitlement to these refund amounts against a current tax law liability of the taxpayer or any future tax law liability of the taxpayer that arises within 60 days after the refund entitlement arises. Also, where the employer entitled to the refund amount is a member of a group, the Commissioner may offset entitlement to that amount against certain pay-roll tax amounts owing by other members of the group. If



the amount is not applied within the specified time, it must be immediately refunded. Section 41 is subject to section 39 *Taxation Administration Act 2001*.

Section 41A applies where an employer who is a member of a group is entitled to a refund under section 37 *Taxation Administration Act 2001*. The Commissioner may offset an entitlement to this refund against certain pay-roll tax amounts owing, or that will become owing, by other members of the group. If the amount is not applied within the specified time, it must be immediately refunded. Section 41A is subject to section 39 *Taxation Administration Act 2001*.

Section 41B clarifies the circumstances where an employer is entitled to a refund of pay-roll tax. An employer is not entitled to a refund of pay-roll tax other than under sections 11BA, 11BE, 11CC or 11CG *Pay-roll Tax Act 1971* as amended by the Bill or part 4, division 2 of the *Taxation Administration Act 2001*. Consequently, there is no right to a refund of amounts paid under the *Pay-roll Tax Act 1971* except in the circumstances set out in these statutory provisions. For example, a taxpayer would be unable to claim a refund of pay-roll tax on the basis of payments made under mistake.

Division 2 – Notification requirements - contains new sections 41C to 41F.

Section 41C requires employers who work out a fixed periodic deduction amount to give the Commissioner written notice of that amount. The notice must be given on or before the return date for lodgment of a periodic return for the periodic return period that includes the calculation day for which the employer worked out the amount.

Section 41D requires employers who are exempt from lodging periodic returns under section 14 to give written notice to the Commissioner if the taxable wages paid or payable for a month exceeds the stated threshold. The threshold is \$70 833 a month in each of three consecutive months. The notice must be given within 28 days of the last day of the third month.

Section 41E requires employers who are or were members of a group to notify the group's designated group employer for a financial year or final period the taxable wages and interstate wages paid or payable by them during that year or period. The designated group employer is required to include these wage details in its annual and final return under sections 14A and 14B.

Section 41F specifies when a liquidator or administrator must give written notice to the Commissioner. Notice must be given within 14 days of becoming the liquidator of a company, or being appointed as the administrator for the property of a person, registered or required to be registered as an employer. Section 48 *Taxation Administration Act 2001* does not apply to the person.

Division 3 – Other provisions - contains new sections 41G and 41H.

Section 41G applies where an employer fails to lodge a return, fails to pay a pay-roll tax liability, or provides a return which contains false or misleading information. Section 41G(2) provides that the Commissioner may, by written notice, require payment of a penalty in these cases. The Commissioner may enter into instalment arrangements, which may involve the payment of interest, for payment of the penalty.

Section 41H sets the record keeping requirements for an employer who elects to include estimated value amounts for fringe benefits in any return. Section 118 *Taxation Administration Act 2001* does not apply to the keeping of these records.

Clause 31 amends section 42 and sets out the special obligations for an employer who pays wages as a trustee. The employer must lodge returns, and pay pay-roll tax, as required by the *Pay-roll Tax Act 1971* in the employer's capacity as trustee. Each return must be separate and distinct from returns lodged by the employer other than as trustee or as trustee of another trust.

Clause 32 omits section 43 and inserts a new section 43. New section 43 requires an employer who changes its address for service to give the Commissioner written notice of the change. The notice must be given within one month after each change. *Address for service* is also defined.

Clause 33 omits sections 44 to 50 and inserts a new section 44 which provides that cents are to be disregarded for calculations under the *Pay-roll Tax Act 1971*.

Clause 34 inserts a new section 52 that provides for numbering and renumbering of the next reprint of the *Pay-roll Tax Act 1971* produced under the *Reprints Act 1992*.

Clause 35 inserts new Part 9 called *Savings and transitional provisions*. Divisions 1 to 7 contain new sections 53 to 84 that deal with transition to the new pay-roll tax arrangements. These transitional provisions are based on the following approach.

1. Provisions of the *Pay-roll Tax Act 1971* as amended by the Bill and the *Taxation Administration Act 2001* of an administrative nature will apply from the commencement date of the Bill regardless of whether or not the relevant liability for pay-roll tax arose, or the relevant act or omission occurred, before or after that date. This will enable the new, more efficient, administrative arrangements to apply as broadly as possible from commencement of the Bill.
2. However, the provisions of the *Pay-roll Tax Act 1971* as amended by the Bill and the *Taxation Administration Act 2001* will not apply to liability for pay-roll tax arising, or acts or omissions occurring, before the commencement date of the Bill where that would affect the substantive rights, liabilities or obligations of an employer. The provisions of the *Pay-roll Tax Act 1971* as in force at the relevant time will continue to apply in these cases.

Part 9 therefore provides for -

- application of the provisions of the *Pay-roll Tax Act 1971* as amended by the Bill and the *Taxation Administration Act 2001* from commencement;
- saving of the provisions of the *Pay-roll Tax Act 1971* as in force before commencement in certain circumstances; and
- transitional provisions for how the provisions of the *Pay-roll Tax Act 1971* and *Taxation Administration Act 2001* as applied and saved will work in the transitional year.

Division 1 – Preliminary – contains new section 53.

Section 53 defines significant terms used in Part 9 – Savings and transitional provisions. Section 53 also contains examples of a liability arising on or after commencement (i.e. a post-commencement liability), a liability arising before commencement (i.e. a pre-commencement liability), and a transitional return period. The following is an example of a pre-commencement act or omission.

*Example*

*The commencement is on 1 March 2005.*

*A liquidator was appointed for the property of an employer in January 2004. Notice of appointment was not given as required under the provisions of the *Pay-roll Tax Act 1971* as in force before*

*commencement. Failure to give notice is an act or omission done or omitted to be done before commencement.*

Division 2 – Application of amended Act and Administration Act – contains new sections 54 to 61.

Section 54 provides for application of the *Pay-roll Tax Act 1971* as amended by the Bill. The amended Act applies to liabilities arising, or acts or omissions done or omitted to be done, on or after commencement of the Bill. (Liability for a transitional return period is not a liability arising on or after commencement of the Bill.) Limitations on this general principle are contained in Part 9 Division 4 of the Bill. Extensions to this general principle are contained in new sections 55 to 58 of the Bill.

Section 55 allows the Commissioner to register a person as an employer under the provisions of section 12A *Pay-roll Tax Act 1971* as amended by the Bill even though that person failed to apply for registration, prior to commencement, under the provisions of the *Pay-roll Tax Act 1971* as in force before commencement.

*Example*

*The commencement is on 1 March 2005.*

*An employer met the criteria for registration under section 12 *Pay-roll Tax Act 1971* as in force before commencement in January 2003, but failed to apply for registration as required to do so under that provision.*

*In April 2005, the employer realises it was required to be registered and applies to the Commissioner for registration. The Commissioner may register that person as an employer under section 12A *Pay-roll Tax Act 1971* as amended by the Bill.*

Section 56 applies where an employer failed to lodge returns as required under the *Pay-roll Tax Act 1971* as in force before commencement. Section 56(2) requires the employer to lodge periodic returns in accordance with the provisions of the *Pay-roll Tax Act 1971* as amended by the Bill even where the pay-roll tax liability for those periods would be a liability arising before commencement. However, penalty for failure to lodge the returns for those periods will remain in accordance with the *Pay-roll Tax Act 1971* as in force before commencement.

*Example*

*The commencement is on 1 March 2005.*

*An employer failed to lodge a return for August 2004 as required to do so under section 13 Pay-roll Tax Act 1971 as in force before commencement.*

*From commencement, lodgment of the return for August 2004 shall be in accordance with sections 13 to 14 Pay-roll Tax Act 1971 as amended by the Bill.*

*Calculation of the employer's liability for pay-roll tax for the period shall still be in accordance with the provisions of the Pay-roll Tax Act 1971 as in force before commencement. The employer shall also remain liable for failing to lodge that return under the provisions of the Pay-roll Tax Act 1971 as in force before commencement.*

Section 57 allows the Commissioner to issue an assessment of annual liability under new section 22 as though the employer had not been liable to lodge periodic returns, even where the employer's obligation to lodge returns arose before the commencement. However, the Commissioner will not be able to make a subsequent reassessment in respect of each of the return periods in that year.

*Example*

*The commencement is on 1 March 2005.*

*Upon audit in July 2005, it is found that an employer failed to lodge monthly returns for the 2003-2004 financial year as required to do so under section 13 Pay-roll Tax Act 1971 as in force before commencement.*

*Even though liability for the 2003-2004 financial year is a pre-commencement liability, the Commissioner may issue an assessment under section 22 for the 2003-2004 financial year on an annual basis, rather than issue an assessment for each of the months in that year. However, the Commissioner may not make a subsequent reassessment in respect of each of the months in that year.*

*As it is a pre-commencement liability, calculation of the employer's liability for the 2003-2004 financial year shall still be in accordance with the provisions of the Pay-roll Tax Act 1971 as in force before commencement.*

Section 58 applies new section 44 from commencement, even where the calculation being performed is in relation to a pre-commencement liability.

Section 59 provides for how the provisions of the *Taxation Administration Act 2001* apply for pay-roll tax.

Upon commencement of the Bill, the *Pay-roll Tax Act 1971* is taken to be a revenue law for the purposes of the *Taxation Administration Act 2001*. The two Acts must then be read together as a single Act. From commencement, certain provisions of the *Taxation Administration Act 2001* will not, however, apply to pre-commencement liabilities. Nor will these particular provisions apply to liabilities for a transitional return period (that is, a return period under the *Pay-roll Tax Act 1971* as in force before commencement that has started but not ended before commencement). The provisions of the *Taxation Administration Act 2001* that do not apply for pay-roll tax in these circumstances are set out in subsection (3). In accordance with the general principle, these provisions will not apply in these circumstances as they would retrospectively affect the substantive rights, liabilities or obligations of an employer. The provisions of the *Pay-roll Tax Act 1971* as in force at the relevant time will continue to apply in these cases.

*Example*

*The commencement is on 1 March 2005.*

*An employer commenced paying wages in excess of the pay-roll tax threshold from 1 July 2003 but failed to register or lodge returns as required to do so under the Pay-roll Tax Act 1971 as in force before commencement. The employer's breach of its obligations for the 2003 – 2004 financial year was discovered on audit in July 2005. Interest and penalties for breach of these obligations in the 2003 – 2004 financial year would continue to be calculated under Part 5 of the Pay-roll Tax Act 1971 as in force before commencement (i.e. penal and additional tax), and not Part 5 of the Taxation Administration Act (i.e. unpaid tax interest and penalty tax).*

Section 59(4) clarifies that the *Taxation Administration Act 2001* applies to acts or omissions after commencement, even where the act or omission relates to a pre-commencement liability or liability for a transitional return period.

*Example*

*The commencement is on 1 March 2005.*

*Upon audit in July 2005, an employer provides false information in relation to the level of its wages for the 2003-2004 financial year.*

*Providing the false information is an act or omission done or omitted to be done after commencement.*

*Even though this act or omission relates to a pre-commencement liability, the employer may be prosecuted for the offence of giving false or misleading information under Part 10 Taxation Administration Act 2001.*

Section 59(8) provides that any application of section 136 *Taxation Administration Act 2001* to a pre-commencement act or omission is subject to the operation of section 38 *Pay-roll Tax Act 1971* as in force before the commencement.

*Example*

*The commencement is on 1 March 2005.*

*An employer failed to lodge returns for the 2003 - 2004 financial year as required to do so under section 13 *Pay-roll Tax Act 1971* as in force before commencement.*

*The breach of the person's obligations under the *Pay-roll Tax Act 1971* was discovered on audit in July 2006.*

*The person's failure to lodge those returns is a pre-commencement act or omission, and subject to the penalty provisions of the *Pay-roll Tax Act 1971* as in force before commencement.*

*Section 38(2) *Pay-roll Tax Act 1971* as in force before commencement continues to apply to allow prosecution for the offence (under section 35(1)(a) *Pay-roll Tax Act 1971* as in force before commencement) to be commenced at any time (and not within 5 years as provided by section 136 *Taxation Administration Act 2001*).*

Other than the exceptions contained in section 59(3), where there are provisions in both the *Pay-roll Tax Act 1971* as amended by the Bill and the *Taxation Administration Act 2001* in respect of the same matter, the provisions of the *Taxation Administration Act 2001* prevail.

*Example*

*The commencement is on 1 March 2005.*

*An employer commenced paying wages in excess of the pay-roll tax threshold from 1 July 2003 but failed to register or lodge returns as required. On or after 1 March 2005, the powers of investigation contained in the *Taxation Administration Act 2001* would apply for determining the wages paid or payable by the employer for 2003 – 2004 financial year. Although Part 8 of the *Pay-roll Tax Act 1971* as*

*in force before commencement contains investigation powers, the provisions of the Taxation Administration Act 2001 prevail and so these other provisions will not apply.*

Section 60 clarifies that the power in section 38 *Taxation Administration Act 2001* to offset an entitlement to a refund against current or future tax law liabilities extends also in relation to liabilities for pay-roll tax arising before the commencement or for a transitional return period.

Section 61 ensures that the increase in the maximum penalty under section 138 *Taxation Administration Act 2001* for a further offence, where the first offence was under the provisions of the *Pay-roll Tax Act 1971* as in force before commencement, applies only where the further offence is committed on or after commencement. It also ensures that the maximum penalty under section 138 may be increased where the first offence was committed against a provision of the *Pay-roll Tax Act 1971* as in force before commencement and a subsequent offence is committed against a corresponding provision of the *Pay-roll Tax 1971* as amended by the Bill or the *Taxation Administration Act 2001*.

Division 3 – Application of previous provisions – contains new section 62.

Section 62 provides that the provisions of the *Pay-roll Tax Act 1971* as in force before commencement continue to apply in relation to pre-commencement liabilities, pre-commencement acts or omissions, and liabilities for a transitional return period. However, in accordance with the general principle, saving of these provisions is subject to application of certain provisions of the *Pay-roll Tax Act 1971* as amended by the Bill and the *Taxation Administration Act 2001* where those provisions are of a purely administrative nature.

*Example*

*The commencement is on 1 March 2005.*

*An employer lodged a return on 7 September 2004 for August 2004 as required to do under section 13 *Pay-roll Tax Act 1971* as in force before commencement*

*Further information obtained on audit in July 2006 discloses that there were additional wages paid or payable for August 2004.*

*Even though after commencement, the Commissioner will assess any further tax payable by the employer under section 18 *Pay-roll Tax Act 1971* as in force before commencement.*



Division 4 – Provisions about periodic liability after commencement – contains new sections 63 and 64.

These sections contain special rules for working out an employer's liability for periodic return periods occurring after commencement but still in the financial year during which the commencement falls (i.e. the transitional year). For example, where the commencement is on 1 March 2005, the 2004-2005 financial year is the transitional year. Periodic return periods occurring after commencement in the transitional year include return periods starting on or after 1 March 2005 and ending on or before 30 June 2005.

Section 63 applies where, immediately before commencement, the amount of the employer's deduction for a return period under the *Pay-roll Tax Act 1971* as in force before commencement had been determined by the Commissioner. This would be the case where the employer is either a non-group member paying interstate wages or a designated group employer. The amount determined by the Commissioner before commencement is taken to be the employer's fixed periodic deduction from commencement until the Commissioner determines a different amount. After the transitional year, an employer's fixed periodic deduction is to be calculated in the usual manner under new sections 8E and 9B.

Section 64 applies where, immediately before commencement, the amount of the employer's deduction for a return period under the *Pay-roll Tax Act 1971* as in force before commencement had been nominated by the employer. This would be the case where the employer is either a non-group member paying interstate wages or a designated group employer. The amount nominated by the employer before commencement is taken to be the employer's fixed periodic deduction from commencement until a calculation day occurs or the Commissioner determines the amount. After the transitional year, an employer's fixed periodic deduction is to be calculated in the usual manner under new sections 8E and 9B.

Section 65 applies where, immediately before commencement, the amount of a non-group employer's deduction for a return period under the *Pay-roll Tax Act 1971* as in force before commencement was the prescribed amount. This would be the case where the employer is not a member of a group and is not liable to pay interstate wages. This type of employer would usually be entitled to claim an actual periodic deduction under the provisions of the *Pay-roll Tax 1971* as amended by the Bill. Section 65 limits when the employer is taken to be a previous interstate

wage payer, and so limits when the employer is entitled to claim a fixed periodic deduction rather than an actual periodic deduction.

Division 5 – Provisions for annual liability for transitional year – contains new sections 66 to 69.

These sections contain special rules for working out an employer's annual liability for the transitional year.

Section 66 is an application provision for the Division.

Section 67 provides that, for working out an employer's annual liability for a transitional year, an employer shall disregard any wages, pay-roll tax or days for prescribed periods during the year. Pay-roll tax for a prescribed period, dealt with under sections 11C or 16L *Pay-roll Tax Act 1971* as in force before commencement, will already have been accounted for.

*Example*

*The commencement is on 1 March 2005. The 2004-2005 financial year is the transitional year.*

*An employer applied for registration as an employer as required from 1 July 2004. The employer became a member of a group on 1 December 2004. The employer, as a member of a group, lodges an annual return for the 2004-2005 financial year.*

*As the period from 1 July 2004 to 30 November 2004 will have been included as part of a prescribed period under section 11C *Pay-roll Tax Act 1971* as in force before commencement, wages or pay-roll tax paid or payable, and days, for that period are to be disregarded when working out the employer's annual liability.*

Section 68 contains an exception to the rule contained in section 67. Notwithstanding section 67, section 68 requires the Commissioner, in certain circumstances, to take into account wages, pay-roll tax and days for prescribed periods during the transitional year when assessing a non-group employer's annual liability for the transitional year. This allows the full benefit of the deduction for those parts of the transitional year that the employer was not a member of a group to be claimed.

Section 69 contains further special rules for working out a designated group employer's annual liability for a transitional year in certain circumstances. These further special rules apply where that employer was a member of a group but not the designated group employer for the group during the transitional year and became the designated group

employer for the group before commencement. The period prior to this change in designated group employer will not be a prescribed period dealt with under sections 11C or 16L *Pay-roll Tax Act 1971* as in force before commencement. In these circumstances, the annual liability of the designated group employer is worked out by also taking into account additional wages, pay-roll tax, and days in the year. The employer's annual return must also state additional wages of members of the group.

*Example*

*The commencement is on 1 March 2005. The 2004-2005 financial year is the transitional year.*

*An employer was a member of a group from 1 July 2004. The employer became designated group employer for the group on 1 December 2004. Another member of the group had been designated group employer for the period 1 July 2004 to 30 November 2004.*

*The employer, as designated group employer, lodges an annual return for the 2004-2005 financial year. The annual liability for the designated group employer is worked out by taking into account wages, pay-roll tax, and days in the year during which the employer was a member of the group, not just for when the employer was designated group employer.*

*The employer's annual return must state wage details of members of the group for the whole of the year.*

Division 6 – Provisions for final liability for transitional final period – contains new sections 70 to 72.

These sections contain special rules for working out an employer's final liability for the final period for the first change of status happening for an employer after the commencement during a transitional year (i.e. a transitional final period). The amount of the final liability is still worked out under Part 3 of the *Pay-roll Tax Act 1971* as amended by the Bill.

Section 70 is an application provision for the division.

Section 71 explains when a transitional final period starts.

*Example 1*

*The commencement is on 1 March 2005. The 2004-2005 financial year is the transitional year. An employer has been a member of a group since being required to register as an employer on 1 December 2004. The employer becomes the designated group employer for the*

*group on 1 April 2005. The transitional final period is the period from 1 December 2004 to 31 March 2005.*

*Example 2*

*The commencement is on 1 March 2005. The 2004 – 2005 financial year is the transitional year. An employer applied for registration as an employer as required from 1 July 2004. The employer becomes a member of a group on 1 January 2005. The employer becomes the designated group employer for the group on 1 June 2005. The transitional final period for the change of status happening on 1 June 2005 is the period from 1 January 2005 to 31 May 2005. (The period from 1 July 2004 to 31 December 2004 will have been included as part of a prescribed period under section 11C Pay-roll Tax Act 1971 as in force before commencement).*

Section 72 contains further special rules for working out a designated group employer's final liability for a transitional final period in certain circumstances. These further special rules apply where that employer was a member of a group but not the designated group employer for the group during the transitional year and became the designated group employer for the group before commencement. The period prior to this change in designated group employer will not be a prescribed period dealt with under sections 11C or 16 L *Pay-roll Tax Act 1971* as in force before commencement. In these circumstances, the final liability of the designated group employer is worked out by also taking into account additional wages, pay-roll tax, and days in the final period. The employer's final return must also state additional wages of members of the group.

*Example*

*The commencement is on 1 March 2005. The transitional year is the 2004 – 2005 financial year.*

*An employer became the designated group employer for a group on 1 December 2004, and leaves the group on 30 April 2005. Prior to becoming the designated group employer for the group, the employer had been a member of the group since 1 July 2004. Another member of the group had been designated group employer for the period 1 July 2004 to 30 November 2004.*

*For the change of status happening on 1 May 2005, the employer must lodge a final return for the transitional final period starting on 1 July 2004 and ending on 30 April 2005. (The period from 1 July 2004 to 30 November 2004 will not have been included as part of a prescribed*

*period under section 11C or 16L Pay-roll Tax Act 1971 as in force before commencement).*

*In working out the designated group employer's final liability for the transitional final period, wages, pay-roll tax, and days for when the designated group employer was a member of the group, but not the designated group employer for the group, must also be taken into account.*

*The employer's final return must state wage details of members of the group for the period from 1 July 2004 to 30 April 2005.*

Division 7 – Miscellaneous provisions – contains new sections 73 to 85.

Sections 73 and 74 contain special rules for working out the annual or final liability of certain employers when there has been a change of designated group employer for a group during the transitional year but before commencement.

Section 73 deals with working out the annual or final liability of a designated group employer for a group when there was a change of designated group employer for the group during the transitional year but before commencement. Section 73 requires the Commissioner, in certain circumstances, to make an assessment of the employer's annual or final liability to reduce that employer's annual or final deduction by the amount of any deduction already claimed by the first designated group employer for the group. This ensures that the designated group employer does not claim more than the annual deduction for the group.

Section 74 deals with working out the annual or final liability of an employer who was the designated group employer for a group but, before commencement during the transitional year, ceased being the designated group employer. Section 74 requires the Commissioner, in certain circumstances, to make an assessment of the employer's annual or final liability to reduce that employer's annual or final wages by the amount of any deduction claimed by that employer while designated group employer for the group. This ensures that the employer is not required to pay tax on the amount of any deduction correctly claimed as designated group employer for return periods under the *Pay-roll Tax Act 1971* in force before commencement.

*Example*

*The commencement is on 1 March 2005. The transitional year is the 2004 – 2005 financial year.*

*The designated group employer for a group on 30 June 2005 became the designated group employer for the group on 1 December 2004. Another member of the group had been designated group employer for the period 1 July 2004 to 30 November 2004.*

*The designated group employer for the group on 30 June 2005 self-assesses its annual liability for the 2004 – 2005 financial year under section 11BD Pay-roll Tax Act 1971 as amended by the Bill. The Commissioner must reassess the designated group employer's annual liability and reduce the amount of the designated group employer's annual deduction by the amount of any deduction claimed by the first designated group employer for the group as designated group employer for the group for the period 1 July 2004 to 30 November 2004 for return periods under the Pay-roll Tax Act 1971 in force before commencement.*

*The employer who had been designated group employer for the group for the period 1 July 2004 to 30 November 2004 (i.e. the first designated group employer for the group) self-assesses its annual liability for the 2004 – 2005 financial year under section 11B Pay-roll Tax Act 1971 as amended by the Bill. As the employer is no longer designated group employer for the group, the employer is not allowed to claim an annual deduction. The Commissioner must reassess the employer's annual liability and reduce the employer's annual wages by any deduction claimed by that employer as designated group employer for the period 1 July 2004 to 30 November 2004 for return periods under the Pay-roll Tax Act 1971 in force before commencement.*

Section 75 provides that delegations in force immediately before commencement continue in force.

Section 76 provides that persons who are registered as employers immediately before commencement are taken to be registered, on and from commencement, under the *Pay-roll Tax Act 1971* as amended by the Bill. This ensures that employers who have been registered will not have to re-apply for registration from commencement.

Section 77 provides that notices that are in force immediately before commencement and which were given by the Commissioner under section 13 *Pay-roll Tax Act 1971* as in force before commencement are taken to have been given, on and from commencement, under the *Pay-roll Tax Act 1971* as amended by the Bill. This ensures that any variation of the time within which an employer is required to lodge a periodic

return or of the duration of the period continues in force after commencement.

Section 78 provides that a certificate that is in force immediately before commencement and which was given by the Commissioner under section 14 *Pay-roll Tax Act 1971* as in force before commencement is taken to have been given, on and from commencement, under the *Pay-roll Tax Act 1971* as amended by the Bill. This ensures that any exemption from lodging periodic returns continues in force after commencement. After commencement, the employer will still be required to lodge an annual and, if applicable, final return.

*Example*

*The commencement is on 1 March 2005.*

*A certificate had been granted by the Commissioner in July 2004 under section 14 Pay-roll Tax Act 1971 as in force before commencement exempting an employer from lodging returns under section 13 Pay-roll Tax Act 1971 as in force before commencement.*

*From commencement, the employer shall be exempt from lodging returns under section 13A Pay-roll Tax Act 1971 as amended by the Bill. The employer is still required to lodge an annual return for the 2004 – 2005 financial year under section 14A Pay-roll Tax Act 1971 as amended by the Bill.*

Section 79 provides that forms approved before commencement may continue to be used after commencement if required for the purposes of administration of the *Pay-roll Tax Act 1971* as amended by the Bill and as a revenue law under the *Taxation Administration Act 2001*.

Section 80 clarifies that, where the Commissioner is allowed to offset an entitlement to a refund under new section 41 or 41A, the Commissioner is allowed to offset the amount against liabilities for pay-roll tax arising before the commencement or for a transitional return period.

*Example*

*The commencement is on 1 March 2005.*

*After working out the employer's annual liability for the 2004 – 2005 financial year under section 11B Pay-roll Tax Act 1971 as amended by the Bill, the employer is entitled to a refund under 11BA Pay-roll Tax Act 1971 as amended by the Bill.*

*The Commissioner is able to offset the amount of the refund against an outstanding pay-roll tax liability for the 2003 – 2004 financial year.*

Section 81 extends a group member's notification requirements under new section 41E for a transitional year or transitional final period. Section 81 applies to a member of a group where the designated group employer for the group on the last day of a transitional year was designated group employer for the group prior to commencement, or where there is a transitional final period for the designated group employer for a group. Under section 41E, employers who are or have been members of a group must notify the group's designated group employer of the taxable wages paid or payable by those group members during that part of a financial year or final period that the designated group employer was designated group employer for the group. For a transitional year, a member of the group must notify the designated group employer of wages paid or payable for any part of the year, not just for the period that the designated group employer was designated group employer for the group. For a transitional final period, a member of the group must also notify the designated group employer of wages paid or payable for any part of the transitional year prior to the transitional final period in addition to wages paid or payable for the designated group employer's final period.

*Example*

*The commencement is on 1 March 2005. The transitional year is the 2004 – 2005 financial year.*

*The designated group employer for a group became the designated group employer for the group on 1 December 2004, and continued as designated group employer for the group until 30 June 2005.*

*The members of the group must, by 7 July 2005, or within 7 days of ceasing to be a member of the group, notify the designated group employer of wages paid or payable as group members for the period 1 July 2004 to 30 June 2005.*

Section 82 ensures that the requirement for a liquidator to notify the Commissioner of appointment under new section 41F upon becoming aware of a liability to notify under section 25 of the *Pay-roll Tax Act 1971* as in force before commencement is not imposed retrospectively.

Section 83 ensures that the requirement for an employer to notify the Commissioner of a change of address for service under new section 43



upon becoming aware of a liability to notify under section 26 of the *Pay-roll Tax Regulation 1999* is not imposed retrospectively.

Section 84 provides that certain references in the *Pay-roll Tax Act 1971* as amended by the Bill are, if the context permits, to be read as including equivalent references in the *Pay-roll Tax Act 1971* as in force before commencement. This is necessary to allow the amended Act to apply where required in relation to a pre-commencement liability, in relation to a pre-commencement act or omission, for a transitional return period, for a transitional final period or for a transitional year.

Section 85 provides for the making of a regulation to ensure the effective transition from the operation of the *Pay-roll Tax Act 1971* as in force before commencement to the operation of the *Pay-roll Tax Act 1971* as amended by the Bill, where provision or sufficient provision is not made for that transition. The regulation may have limited retrospective effect. Provision is also made for the expiry of this section and any regulation made under it after 5 years.

Clause 36 inserts a new Schedule containing a dictionary of terms used in the Bill.

### **Part 3 Amendment of *Taxation Administration Act 2001***

Clause 37 provides that Part 3 of the *Pay-roll Tax Administration Amendment Bill 2004* amends the *Taxation Administration Act 2001*.

Clause 38 amends section 6 to provide that the *Pay-roll Tax Act 1971* is a revenue law.

Clause 39 amends the heading of Part 13, Division 2 to refer to the repealed Stamp Act.

Clause 40 inserts a new Part 13 Division 3 – Transitional provisions for the *Pay-roll Tax Act 1971* – comprising new section 164. Section 164 provides for the making of transitional regulations where the *Taxation Administration Act 2001* does not make provision or sufficient provision for the effective transition to the *Pay-roll Tax Act 1971* as a revenue law under the *Taxation Administration Act 2001*. Section 164 and any transitional regulation made under that section expire 5 years after commencement of the section.

## **Part 4 Minor and consequential amendments**

Clause 41 provides that the Schedule amends the Acts mentioned in the Schedule. In the Schedule, a number of minor amendments are made to the *Pay-roll Tax Act 1971* as well as a consequential amendment to the *Workers' Compensation and Rehabilitation Act 2003*.