Pay-roll Tax Amendment (Harmonisation) Bill 2008

Explanatory Notes

General Outline

Policy Objectives

To amend the *Pay-roll Tax Act 1971* (the Act) to improve alignment with other jurisdictions' legislation, particularly New South Wales and Victoria, and provide two further exemptions.

Reasons for the Bill

All states and territories impose pay-roll tax on wages paid by employers to their employees. Over time, each jurisdiction has amended their legislation, modelled on the original Commonwealth legislation, resulting in differences in tax base and administration. These differences have been raised regularly by business as increasing compliance costs, particularly for those businesses that employ in more than one jurisdiction.

All states and territories have been working on an Inter-jurisdictional Consistency Project (ICP) to improve pay-roll tax alignment in an initial eight areas covering motor vehicle and accommodation allowances, fringe benefits, wages for work performed in another jurisdiction, grouping, employee share acquisition schemes and superannuation contributions. Separately, New South Wales (NSW) and Victoria (VIC) further aligned their legislation from 1 July 2007.

The 2007-08 State Budget confirmed adoption of the eight ICP measures and also that Queensland would consider the NSW-VIC proposals, with the final package of measures to commence on 1 July 2008.

The *Pay-roll Tax Act 1971* (together with the *Pay-roll Tax Regulation 1999*) will be predominantly amended to implement the changes to the areas agreed in the ICP and to also achieve substantial consistency with NSW and VIC. As a result of the package of measures, Queensland will be aligned in the vast majority of areas announced in the NSW-VIC proposals.

In many cases, the provisions of the *Pay-roll Tax Act 1971* are already consistent with those in other jurisdictions, particularly NSW and VIC, and therefore no change is necessary. There are also areas where a consistent position has not been achieved between NSW and VIC and in those cases there will be no Queensland change.

Some inconsistencies will also exist due to jurisdiction-specific circumstances. In addition, given that significant amendment was recently made to the *Pay-roll Tax Act 1971* in 2005 to introduce a number of administrative changes for new business processes and facilitation of e-business, a number of administrative changes have not been adopted. Also, while it is not possible to adopt provisions that are uniform with the NSW-VIC provisions, outcomes from applying the provisions will be consistent with NSW-VIC.

Changes cover taxable wages, exemptions, allowances and grouping of employers. The package is expected to be overall revenue neutral. No changes will be made to the tax rates or threshold.

Amendments will be made to the *Pay-roll Tax Act 1971* in the following areas:

1. increase in the motor vehicle allowance exemption rate;
2. increase in the accommodation allowance exemption rate;
3. change to using the type 2 gross-up factor for valuing fringe benefits;
4. new exemption for paid parental and adoption leave;
5. new exemption for bushfire fighting and emergency volunteers;
6. new exemption for volunteer honorary ambulance officers;
7. new Community Development Employment Project exemption;
8. introduction of relevant contracts provisions;
9. introduction of employee share acquisition scheme provisions;
10. inclusion of termination payments to non-employee directors;
11. inclusion of superannuation payments to non-employee directors;
12. amendment of the exclusion of wages for work performed 'outside Australia' to 'in another country';
13. inclusion of 'remuneration' in the general definition of 'wages';
14. adoption of specific third party payment provisions;

15. changes to the grouping provisions; and

16. changes to the employment agent provisions.

Achievement of Objectives

Motor vehicle allowance exemption

Section 4(5) of the *Pay-roll Tax Act 1971* and section 24(a) of the *Pay-roll Tax Regulation 1999* provide a motor vehicle allowance exemption at a rate of 50 cents per kilometre.

The ICP agreed a recommendation to change the amount of the allowance so that it is linked to the large car rate prescribed by the Australian Tax Office (ATO) for income tax deduction purposes, which is currently 70 cents per kilometre, updated annually.

In addition, NSW-VIC have provided for specific record keeping provisions in their harmonised legislation based on the ATO record keeping provisions. To maintain consistency with NSW-VIC it is proposed to adopt these record keeping provisions.

The *Pay-roll Tax Act 1971* is to be amended to replace the existing allowance rate with the ATO large car rate, updated annually. A consequential amendment is also proposed for the *Pay-roll Tax Regulation 1999*. The *Pay-roll Tax Act 1971* is also to be amended to adopt the NSW-VIC record keeping provisions.

Accommodation allowance exemption

Section 4(5) of the *Pay-roll Tax Act 1971* and section 24(b) of the *Pay-roll Tax Regulation 1999* provide an accommodation allowance exemption at the rate of $90 for each night the employee is required to work away from home. In addition to accommodation, the exemption rate includes expenses for meals and incidental items if such expenses are directly related to performing duties away from the employee's usual place of residence. Any allowance paid is taxed only on the portion above $90 for pay-roll tax purposes.

The ICP agreed a recommendation to change the amount of the allowance so that it is linked to 'lowest salary band/lowest capital city' rate prescribed by the ATO for income tax deduction purposes, updated annually. The ATO lowest salary band, lowest capital city rate is currently $201.25 per night. This rate is the total of allowances for accommodation, meals and incidentals.

The ATO prescribes a wide range of rates, separately identifying accommodation, meals and incidentals which are divided into three separate annual salary bands. These salary bands apply to capital cities and for other locations within each state. While these rates could be tailored to each jurisdiction, that approach does not improve harmonisation.

The *Pay-roll Tax Act 1971* is to be amended to replace the existing allowance rates with the ATO rate, updated annually. A consequential amendment is also proposed for the *Pay-roll Tax Regulation 1999*.

Fringe benefits tax -gross-up factor

Queensland requires employers to apply the same gross-up rate for pay-roll tax purposes as they use for calculating FBT (FBT). Under the Commonwealth FBT legislation, the taxable amount of fringe benefits is the taxable value after application of a gross-up formula. The gross-up has the effect that FBT is calculated as if the employer provided fringe benefits with a taxable value that included the FBT paid by the employer, that is, on the tax-inclusive value of the fringe benefit.

Since 1 July 2000, when GST was introduced, a supplementary gross-up formula for determining taxable amounts of fringe benefits that attract GST came into operation.

The original formula (type 2 - gross-up factor 1.8692) is applied where the employer is not entitled to claim a GST input tax credit (eg purchase of GST free education for the employee). The supplementary formula (type 1 - gross-up factor 2.0647) is applied where the employer is entitled to claim a GST input credit (eg the purchase of a taxable supply such as a plasma television set for the employee).

The type 1 formula grosses-up the fringe benefit at a higher rate than the type 2 formula. This is done to exclude the benefit of the GST input tax credit received by the employer in calculating FBT. This recognises that an employee who purchased the good or service for private use would not have been entitled to the GST tax credit. The higher gross-up formula for fringe benefits that attract a GST input tax credit offsets the benefit of the credit.

For pay-roll tax purposes, fringe benefits are valued in the same manner as for FBT (ie applying one of the two different gross-up rates as appropriate). This method was chosen on the basis that it minimised compliance costs for employers through consistency with Commonwealth legislation. However there is an argument that for pay-roll tax purposes fringe benefits

should only be grossed-up at the lower rate. This is because the current two rate valuation results in more pay-roll tax being paid by an employer where an employee receives remuneration in the form of a fringe benefits package than if the employee received the same remuneration as salary only.

For example, the effect of retaining the higher gross-up factor for pay-roll tax purposes where the pay-roll tax rate is 4.75% is as follows:

- pay-roll tax liability for providing an employee $10,000 in cash would be $475; and
- pay-roll tax liability for providing an employee a salary package of total value of $10,000 for a fringe benefit which attracted GST would be $500.

Further, employers are required to only use the type 2 gross-up factor for calculating the value of fringe benefits that are reported on employee group certificates regardless of whether GST is paid on the benefit.

The *Pay-roll Tax Act 1971* is to be amended to require employers to only apply the Commonwealth's type 2 gross-up factor.

New exemptions for paid maternity and adoption leave

Queensland does not currently provide pay-roll tax exemptions for wages paid to an employee for maternity or adoption leave. NSW has introduced exemptions for wages paid for maternity or adoption leave to align with the VIC exemptions for these types of leave.

The NSW-VIC exemptions apply to wages paid or payable to an employee in respect of maternity leave or adoption leave. The key aspects of these follow.

Maternity leave

- leave given to female employee in connection with pregnancy or birth of her child;
- can be taken during or after pregnancy;
- does not have to be an unbroken, continuous period of leave;
- only applies to female employees;
- does not cover sick leave, recreation leave, annual leave or any similar leave, or wages that are fringe benefits;

- applies to a maximum of 14 weeks maternity leave for any one pregnancy: 14 weeks full pay for full-time employees and 14 weeks at part-time rates for part-time employees; and
- evidentiary requirements for employers wanting to claim exemption, such as a medical certificate or statutory declaration.

Adoption leave

- leave given to employee in connection with adoption of a child by him or her;
- can be taken before or after the adoption;
- does not have to be an unbroken, continuous period of leave;
- applies to both female and male employees;
- does not cover sick leave, recreation leave, annual leave or any similar leave, or wages that are fringe benefits;
- applies to a maximum of 14 weeks adoption leave for any one adoption: 14 weeks full pay for full-time employees and 14 weeks at part-time rates for part-time employees; and
- evidentiary requirements for employers wanting to claim exemption: statutory declaration.

The *Pay-roll Tax Act 1971* is to be amended to provide exemptions for wages paid or payable to an employee for maternity and adoption leave on the above basis. In addition, the *Pay-roll Tax Act 1971* is to be amended to provide exemption for wages paid or payable to an employee for paternity leave in the same circumstances as the exemption for maternity leave.

New exemptions for bushfire fighting and emergency volunteers

Queensland does not currently provide exemptions for wages paid to an employee who takes part in bushfire fighting activities or engages in emergency activities as a volunteer. VIC has amended its pay-roll tax legislation to introduce exemptions to align with those provided by NSW.

The NSW and VIC exemptions apply to wages paid or payable to an employee in relation to any period during which the employee is taking part in bushfire fighting activities as a volunteer, or engaging in emergency activities as a volunteer. The exemptions also include a range of associated activities including training in bushfire and emergency procedures and prevention activities such as hazard reduction burning.

As the NSW and VIC exemptions operate by reference to their respective bushfire and emergency services legislation, there are some differences. In particular, the NSW exemption is limited to rural fire brigades whereas the VIC exemption also extends to urban fire brigades. The NSW and VIC exemptions also specifically refer to volunteers.

The relevant legislation for Queensland is the *Fire and Rescue Service Act 1990* (the FRSA) in relation to fire fighting and fire prevention and the *Disaster Management Act 2003* (the DMA) in relation to disasters and emergency situations. The Department of Emergency Services has confirmed that, while not specifically set out in these Acts, volunteer membership is only available in relation to activities carried out by rural fire brigades under the FRSA (section 79), the State Emergency Service under the DMA (Part 6) and an Emergency Service Unit under the DMA (Part 7). Accordingly, Queensland's exemptions will apply to these volunteer activities.

The *Pay-roll Tax Act 1971* is to be amended to provide exemptions for wages paid or payable to an employee in relation to any period during which the employee is taking part in bushfire fighting activities as a volunteer, or engaging in emergency activities as a volunteer.

New exemption for volunteer honorary ambulance officers

Queensland does not currently provide an exemption for wages paid to an employee who performs the functions of the Queensland Ambulance Service as a volunteer honorary ambulance officer.

Honorary ambulance officers are appointed and carry out functions under s.14 of the *Ambulance Service Act 1991*.

Exemption for volunteer honorary ambulance officers is considered complementary to the introduction of the new exemptions for bushfire fighting and emergency volunteers.

The *Pay-roll Tax Act 1971* is to be amended to provide exemption for wages paid or payable to an employee in relation to any period during which the employee is performing functions of the Queensland Ambulance Service as a volunteer honorary ambulance officer under the *Ambulance Service Act 1991*.

New Community Development Employment Project exemption

The Community Development Employment Projects (CDEP) programme is an Australian Government funded initiative for unemployed Indigenous people outside of major urban and regional centres. The programme

provides activities which develop participants' skills to assist them move into employment outside the CDEP organisation. Programme activities can also lead to the development of business enterprises.

Both NSW and VIC provide exemption from pay-roll tax for wages that are paid to an Indigenous person who is employed under the CDEP.

The *Pay-roll Tax Act 1971* is to be amended to introduce a similar exemption.

Introduction of contractor provisions

Queensland does not currently impose pay-roll tax on payments to contractors, except where the contractor works through an employment agent and in the case of certain avoidance arrangements.

The definition of wages in the *Pay-roll Tax Act 1971* generally requires the payment to be made to an employee to be taxable. Employee is not defined in the Act, therefore common law employment tests apply to determine whether a worker is an employee. In many cases, these tests can be difficult for businesses to apply to accurately assess their liability when they engage contractors. Further, the absence of any specific taxing provision for contractors provides opportunities for avoidance by converting common law employees to contract arrangements to minimise pay-roll tax and other employment on-costs.

Contracting arrangements have benefits over common law employment for various reasons, including:

- reduced exposure to industrial relations issues;
- ability to engage "just in time" labour (ie engage only core staff on a permanent basis and other staff only as required on a contract basis, which may be for an extended period); and
- many high income earners have become contractors to gain access to income tax benefits.

The use of contracting arrangements result in pay-roll tax revenue leakage. Queensland currently relies on a specific anti-avoidance provision to impose pay-roll tax on payments made to employee-like workers through an interposed entity, such as a company. Also, employment agency arrangements are taxed under separate provisions. However, this has limited utility and provides no certainty for employers, who must review each arrangement and apply the complex common law employment tests to

determine whether in the absence of the interposed entity, an employment relationship would exist between the worker and the principal.

Under the NSW-VIC harmonisation arrangements, NSW and VIC have fully aligned their relevant contracts provisions. Under the NSW and VIC provisions, payments to contractors providing services, other than contractors supplied by an employment agent, which are dealt with under separate provisions, are liable to pay-roll tax unless one or more of the exclusions applies. This is in addition to wages paid to an employee under a contract of service. The exclusions are designed to exclude payments to genuine independent contractors.

The *Pay-roll Tax Act 1971* is to be amended to introduce relevant contracts provisions based on the NSW-VIC provisions.

Introduction of employee share acquisition scheme provisions

Employee share acquisition schemes (ESAS) are a form of employee incentive scheme under which a company issues shares to an employee who then has a personal financial stake in the company. Options can also be granted to purchase shares at a later date. These arrangements can be structured in various ways.

The *Pay-roll Tax Act 1971* does not specifically tax shares or options under ESAS. As a result, shares and options will only be taxed if they fall within the general definition of wages, requiring case-by-case basis consideration. The existing ad hoc approach of taxing some shares and options but not others results in complexity, uncertainty and inequity.

Under the recently adopted NSW-VIC harmonisation proposals, VIC has adopted the NSW provisions, which include benefits under ESAS as wages for pay-roll tax purposes, from 1 July 2007.

The *Pay-roll Tax Act 1971* is to be amended to include specific provisions to tax ESAS based on the NSW-VIC provisions.

Termination payments to non-employee directors

Queensland currently taxes payments made to employees as a consequence of the termination of their employment in addition to the ordinary wages of those employees. Queensland also taxes remuneration to directors or members of the governing body of a company. However, this does not extend to termination payments to non-employee directors.

The NSW-VIC provisions impose pay-roll tax on amounts paid by a company as a consequence of the termination of the services or office of a

director, which includes members of the governing body of the company. The amount is taxable whether or not it is paid to the director or to any third party. The amount is required to be an employment termination payment within the meaning of Commonwealth legislation.

Under Commonwealth legislation, an employment termination payment is a payment a person receives in consequence of the termination of their employment. These payments also include payments a person receives, after another person's death, in consequence of the termination of the other person's employment (death benefit termination payments). Unlike NSW and VIC, Queensland does not currently impose pay-roll tax on death benefit termination payments.

The *Pay-roll Tax Act 1971* is to be amended to impose pay-roll tax on termination payments to non-employee directors by adopting the NSW-VIC provisions. This change will bring the pay-roll tax treatment of payments to non-employee directors into line with those relating to employees. In addition, death benefit termination payments will also become taxable for both employees as well as non-employee directors.

Technical amendments will also be made to reflect changes to the relevant Commonwealth legislation.

Superannuation contributions – non-employee directors

Superannuation contributions are a form of remuneration paid by employers to their employees and are included in employers' taxable wages. However, Queensland does not impose pay-roll tax on superannuation payments made to non-employee directors.

Under the ICP outcomes, all superannuation contributions to non-employee directors will be subject to pay-roll tax. Therefore, the *Pay-roll Tax Act 1971* is to be amended to include superannuation contributions to non-employee directors as wages for pay-roll tax purposes.

Work performed wholly or partly outside a jurisdiction – services performed "in another country"

Queensland excludes from pay-roll tax wages paid in Queensland for work performed wholly in another state or territory or outside Australia.

Under the ICP outcomes, all jurisdictions will adopt the wording "in another country". This will provide consistency and ensure that wages paid to offshore employees are not inappropriately excluded from pay-roll tax. Accordingly, the *Pay-roll Tax Act 1971* is to be amended to replace the term "outside Australia" with "in another country".

Wages (minor changes)

Unlike NSW and VIC, Queensland does not include 'remuneration' in the general definition of wages. Remuneration means 'payment for services' and can include reasonable allowance in respect of expenses properly incurred in the pursuance of the duties of any office. The *Pay-roll Tax Act 1971* is to be amended to include the word 'remuneration' in the definition of 'wages'.

The NSW and VIC legislation also include a broad and detailed provision covering wages paid by or to third parties. The provisions cover not only third party payments relating to employees, but also third party payments relating to directors. Queensland, on the other hand, relies on more general wording in the definition of 'wages', namely, wages paid in relation to an employee as an employee, or applied for the employee's benefit. The *Pay-roll Tax Act 1971* is to be amended to adopt the more specific NSW-VIC third party provisions.

Grouping

Employers related or connected to each other are treated as a group for pay-roll tax purposes. The tax liability of a group depends on the level of combined Australian wages of all group members and there is only one deduction per group, claimed by the designated group employer. Grouping prevents employers avoiding pay-roll tax by splitting pay-roll over several entities, with each entity claiming the $1 million threshold/deduction.

Under the *Pay-roll Tax Act 1971*, employers may be grouped where:

1. they are related bodies corporate under the *Corporations Act 2001* (Cwlth);
2. they share employees;
3. a person has or persons have together a controlling interest in each of two or more businesses (the "common control" test);
4. a head or parent business exercises managerial control over a branch, agency or subsidiary business; or
5. an employer is a member of two or more groups. In these cases, all groups are combined.

Because the provisions are drafted broadly, the Commissioner of State Revenue has a discretion to exclude members from a group where satisfied as to certain matters.

Under their harmonised arrangements, the grouping provisions announced by NSW-VIC:

- adopt all the above grouping categories except category 4, head and branch businesses;
- adopt a common control test threshold of more than 50%;
- adopt the NSW tracing rules which take account of direct and indirect interests to address complex business structures which avoid grouping;
- include a commissioner's discretion to exclude a business from a group; and
- include a general provision for joint and several liability of group members.

The *Pay-roll Tax Act 1971* is to be amended to adopt the NSW-VIC grouping provisions.

Employment agents

In Queensland, pay-roll tax applies to certain payments made by employment agents which would not fall within the common law definition of 'wages'. Liability arises where an agent procures for a client the services of an individual worker to perform employee-like functions and the worker does not become an employee of either the agent or the client. The employment agent is treated as the worker's employer if the agent receives payment from the client and pays the worker for the services. An example is temporary staff engaged through an agency.

The provisions adopted by NSW and VIC differ from Queensland in the following respects.

- They extend to payments by employment agents which are fringe benefits or superannuation.
- With some exceptions, the employment agent can claim the benefit of a pay-roll tax exemption if the client, as opposed to the agent, could claim that exemption. (However, this does not extend to cases where the client would not be liable to tax because their taxable wages were below the threshold.) For example, if the client was a charitable institution which employed the worker directly so that the wages would have been exempt under one of the charitable institution exemptions, the

remuneration paid by the agent to the worker would be exempt even though the agent is not a charitable institution.

- They contain a general anti-avoidance provision in relation to employment agents.

The *Pay-roll Tax Act 1971* is to be amended to align the employment agent provisions with those in NSW-VIC.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Implementation costs are not expected to be significant. These costs relate to client education activities, changes in publications, documents, website and systems, staff training and managing enquiries through the implementation period.

Consistency with Fundamental Legislative Principles

1. The Bill raises a number of fundamental legislative principles (FLP).

2. The following proposed amendments may raise the FLP of not having sufficient regard to the institution of Parliament on the basis that these provisions inappropriately allow the delegation of legislative power or authorise the amendment of an Act by subordinate legislation.

   a) The amendment re-enacting that the value of wages comprising fringe benefits is the value as worked out under the section or as otherwise prescribed by regulation.

      The calculation of the value of fringe benefits for pay-roll tax purposes is complex given that the financial years for pay-roll tax purposes and for FBT purposes are different. In addition, liability arises under the *Pay-roll Tax Act 1971* for periodic, annual and final periods. Given this, provision is made for an employer to be able to calculate fringe benefits on either an estimated or actual basis and also to provide guidance for an employer on the amount for fringe benefits to be included for periodic, annual or final returns where the estimated basis has been chosen. Given the detailed technical nature of these

provisions, it is considered more appropriate to include them in a regulation.

In addition, there may be instances where a different value for a particular fringe benefit is more appropriate. The power to provide a different value by regulation provides flexibility so that the most appropriate basis for valuation of fringe benefits for pay-roll tax purposes.

b) The amendments linking the motor vehicle and accommodation allowance rates to the relevant rate prescribed under the *Income Tax Assessment Act 1997* (Cwlth) or rate decided by the Commissioner of Taxation of the Commonwealth, or other rate prescribed by regulation.

The linking, by all states and territories, of the allowance rates to the relevant Commonwealth rates is considered appropriate to reduce compliance costs for employers who will be operating with the Commonwealth income tax framework in this area and ensure ongoing consistency with the Commonwealth rate, including the annual adjustment of the rate. The Commonwealth rates are easily identifiable and published. If no rate is prescribed or decided by the Commonwealth, provision is made for the rate to be prescribed by regulation. This is considered necessary to ensure that an exemption will be able to be claimed by employers, even in the event that there are no Commonwealth rates. A regulation power is considered appropriate in these circumstances to facilitate a quick response, if necessary and to ensure that an appropriate rate is able to be prescribed.

3. The following proposed amendments may raise the FLP of impacting on the rights and liberties of individuals on the basis that those rights and liberties are dependent on the exercise of administrative power which is not sufficiently defined.

a) The amendment providing the Commissioner of State Revenue with discretion to allow an employer a later time to nominate a replacement vehicle for the purposes of claiming the motor vehicle allowance.

The time in which an employer is required to nominate a replacement vehicle is clearly stated in the provision. The inclusion of the Commissioner of State Revenue's discretion provides flexibility to ensure that the lack of nomination within

the required time does not prevent employers from being able to claim exemption for that vehicle in circumstances where they may have inadvertently overlooked the nomination requirement. The provision also allows the Commissioner of State Revenue to consider all circumstances surrounding the case and only allow an extension of time only in appropriate cases, thereby protecting the revenue base. It is therefore considered that the provision of the discretion without criteria is appropriate.

b) The amendment providing the Commissioner of State Revenue with the power to require an employer that, for claiming the motor vehicle allowance, has elected to use the averaging method for working out the number of exempt kilometres, to recalculate the relevant percentage which is used in that calculation.

The averaging method provides employers with an ability to reduce record keeping requirements. The averaging method allows employers to record the percentage of kilometres travelled for business to total kilometres travelled in an averaging period, and then use this percentage to determine exempt kilometres travelled for the remainder of the financial year, as well as the next 4 financial years. This means that pay-roll tax liability in relation to motor vehicle allowances is worked out on an estimated basis.

Given the estimated basis for working out liability, the reduced record keeping requirements and the length of time for which the relevant percentage is able to be used, there will be circumstances where it is appropriate for the relevant percentage to be recalculated. Obvious circumstances that have been identified have been stated in the provision. However, it is not possible to anticipate all circumstances in which a recalculation may be warranted. Accordingly, the proposed power for the Commissioner of State Revenue to require a recalculation has been included. The provision allows the Commissioner of State Revenue to consider all circumstances surrounding the case and require a recalculation in appropriate cases, thereby protecting the revenue. In addition, any decision to require a recalculation of the relevant percentage is open to challenge on objection and appeal under the *Taxation Administration Act 2001*. It is therefore considered that the inclusion of this power without defined criteria is appropriate.

c) The amendment providing the Commissioner of State Revenue with the power to disregard an employment agency contract and determine a party to be an employer for pay-roll tax purposes.

This provision is part of a general anti-avoidance provision for employment agency contracts and applies where the effect of the contract is to reduce or avoid a party's liability to pay-roll tax. The Commissioner of State Revenue must provide the person taken to be an employer with a written notice of his decision stating the facts on which the Commissioner has relied and the reasons for the decision. It is considered that this provision is necessary to protect the revenue and ensure equity by preventing businesses from structuring engagement arrangements to avoid pay-roll tax to gain a competitive advantage over other employers. In addition, the decision is open to challenge on objection and appeal under the *Taxation Administration Act 2001*.

d) The re-enactment of the Commissioner of State Revenue's discretion to exclude a person from being a member of a group.

The grouping provisions ensure that pay-roll tax is not avoided by employers by splitting the pay-roll over several entities, each claiming the $1,000,000 deduction/threshold.

Businesses are only grouped under the *Pay-roll Tax Act 1971* where they are carried on by related corporations or are otherwise closely controlled by common entities or persons or connected through the use of common employees.

However, despite this, there may be instances where it is considered that grouping of businesses under the relevant tests may not be appropriate. Accordingly, the Commissioner of State Revenue is provided with a discretion, other than for entities grouped as related corporations, to exclude entities from the group where they are not substantially connected with, or dependent on, each other. The discretion therefore ensures that inappropriate grouping does not occur under the provisions.

Further, the matters which the Commissioner of State Revenue must have regard to in the exercise of the discretion are clearly set out in the provision. Finally, the inclusion of the proposed discretion is essentially a re-enactment of the exclusion from grouping discretions that currently exist in Queensland's

grouping provisions. Similar discretions also exist in all other state and territory pay-roll tax legislation. Accordingly, it is considered that the discretion is sufficiently defined and appropriate in the circumstances.

e) The amendment providing the Commissioner of State Revenue with the power, in relation to valuing the grant of a share or option, to choose to adopt the decisions of the Commonwealth Commissioner of Taxation or to make the decision himself.

The valuation of grants of shares or options is worked out in accordance with the Commonwealth income tax provisions which set out in detail the basis on, and way in, which the value is to be calculated. As part of those provisions, the Commonwealth Commissioner of Taxation may accept a valuation report in a form that he has approved or may approve an alternative, but reasonable method, for valuing unlisted shares and rights.

The proposed provision allows the Commissioner of State Revenue to adopt those reports or other valuations or to approve an alternative valuation method himself. This provides flexibility in the administration of the *Pay-roll Tax Act 1971* and reduces compliance costs for employers by allowing the Commissioner of State Revenue to accept the income tax valuation basis where it is appropriate. However, there may be instances where an alternative valuation methodology may be more appropriate in the circumstances which the Commissioner of State Revenue may approve. For example, the Commissioner of State Revenue may have concerns about the valuation provided for income tax purposes. In addition, the Commissioner of State Revenue's decision is open to challenge on objection and appeal under the *Taxation Administration Act 2001*. It is therefore considered that the inclusion of this power without defined criteria is appropriate and will protect the revenue.

4. The proposed amendment providing the Commissioner of State Revenue with power to approve an alternative method for an employer to use for working out the number of exempt kilometres travelled in claiming a motor vehicle allowance may raise the FLPs of:

- impacting on the rights and liberties of individuals on the basis that those rights and liberties are dependent on the exercise of administrative power which is not sufficiently defined; and
- not having sufficient regard to the institution of Parliament on the basis that legislative power should only be delegated in appropriate cases and to appropriate persons.

The provision requires the Commissioner of State Revenue to be satisfied the alternative method would be more appropriate in the particular circumstances. In addition any approval must be in writing. For example, the employer may not have complied with the methods set out in the Act, however, the method chosen by the employer and supporting records may be acceptable to the Commissioner of State Revenue. The power provides flexibility in these circumstances so that the employer is not prevented from claiming the motor vehicle allowance. In addition, there may be circumstances where an alternative method may be more appropriate for a particular employer to protect the revenue base. The provision allows these matters to be considered by the Commissioner of State Revenue who is charged with the administration of the *Pay-roll Tax Act 1971*. It is therefore considered that the inclusion of the power is appropriate.

5. The proposed amendment providing generally for joint and several liability of group members may raise the FLP of impacting on the rights and liberties of individuals on the basis that it would make a person liable for the debts of another person.

   As stated, businesses are only grouped where they are closely related or otherwise connected with each other. Further, periodic, annual and final liability amounts for the designated group employer and ultimately each group member is determined by reference to the wages paid or payable by the entire group. Therefore, while each group member is liable for pay-roll tax individually, this liability is connected to other group members.

   In Queensland the current joint and several liability provision is similar, though narrower, than that applying in NSW and VIC. In Queensland, where a designated group employer fails to pay any annual or final liability amount, each group member is jointly and severally liable for those amounts. However, in NSW and VIC, their provisions also extend to periodic liability amounts, interest and penalty tax.

Given the above, the extension of joint and several liability for group members to periodic liability amounts, interest and penalty tax is considered appropriate and necessary to protect the revenue. Similar provisions also exist in other state and territory pay-roll tax legislation.

6. The above proposed amendments will also provide greater harmonisation with other jurisdictions, in particular, NSW and VIC.

7. The remaining provisions of the Bill are not considered to raise fundamental legislative principle issues.

Consultation

To the extent that the Bill gives effect to State Budget announcements, public consultation was not necessary.

Consultation on the other amendments contained in this Bill was considered either unnecessary or inappropriate.

Notes On Provisions

Clause 1 cites the short title of the Bill.

Clause 2 states that the Bill commences on 1 July 2008.

Clause 3 states that the Bill amends the *Pay-roll Tax Act 1971*.

Clause 4 amends section 3 of the *Pay-roll Tax Act 1971* to include as taxable wages superannuation contributions to company directors or members of the governing body of a company.

Clause 5 inserts a new section 3A definition of "termination payment" in the *Pay-roll Tax Act 1971* for the definition of "wages" new paragraph (h) (as renumbered). Paragraph (h) includes termination payments as wages for pay-roll tax purposes. "Termination payment" is defined as a payment made because of the retirement from, or termination of, any office or employment of an employee. This includes:

- unused annual leave and long service leave payments; and

- employment termination payments (within the meaning of section 82-130 of the *Income Tax Assessment Act 1997* (Cwlth)) that would be included in the assessable income of an employee under Part 2-40 of that Act, including transitional termination payments within the meaning of section 82-10 of the *Income Tax (Transitional Provisions) Act 1997* (Cwlth), and any payment that would be an employment termination payment but for the fact it was received more than 12 months after the termination.

The definition of "termination payment" also includes amounts paid or payable:

- by a company because of the termination of the services or office of a director; or
- by a person who is taken to be an employer under the contractor provisions contained in Part 2, Division 1A of the Bill, because of the termination of the supply of services by a person taken to be an employee under those provisions.

Clause 6(1) amends the heading for section 4 of the *Pay-roll Tax Act 1971*.

Clause 6(2) inserts a note for section 4(1) of the *Pay-roll Tax Act 1971* to explain what other provisions of the Act apply for the definition of "wages".

Clause 6(3) amends section 4(2) of the *Pay-roll Tax Act 1971* to ensure the appropriate continued operation of that provision.

Clause 6(4) amends section 4(4) of the *Pay-roll Tax Act 1971* to reflect the renumbering of the paragraphs in the definition of "wages".

Clause 6(5) omits section 4(5) from the *Pay-roll Tax Act 1971*. Provisions dealing with motor vehicle and accommodation allowances are inserted as new Division 1D in Part 2.

Clause 6(6) renumbers section 4(6) and (7) of the *Pay-roll Tax Act 1971*.

Clause 7 amends section 9(1)(a)(ii) of the *Pay-roll Tax Act 1971* to exclude from taxable wages, wages that are paid or payable in Queensland, other than wages paid or payable for services performed entirely in another country (as opposed to outside Australia) for more than 6 months.

Clause 8 replaces section 13(5) of the *Pay-roll Tax Act 1971* with new subsections (5) and (6). New subsection (5) provides a new formula for determining the value of a fringe benefit for pay-roll tax purposes. This value is the taxable value of the fringe benefit grossed-up using the formula

for "Type 2 benefits" specified in the *Fringe Benefits Tax Assessment Act 1986* (Cwlth). New subsection (6) states that section 13 does not apply to taxable wages comprising the grant of a share or option as there are specific provisions that apply in calculating the value of those wages.

Clause 9 inserts new Divisions 1A-1D into Part 2 of the *Pay-roll Tax Act 1971*.

New Division 1A – Contractor provisions

Section 13A contains the definitions that are applicable for the contractor provisions in Division 1A. "Re-supply" is defined, in relation to goods acquired from a person, to include a supply to the person or, if the person is a member of a group, to another group member, of goods in an altered form or condition and a supply to the person or other group member of goods in which the first-mentioned goods have been incorporated. References to the other group member have been included to ensure the provisions operate as intended.

Section 13B defines a "relevant contract" as one under which a person, in the course of a business carried on that person, supplies to another person, or is supplied with persons to perform work, or gives out goods to individuals for work to be performed by those individuals and for the re-supply of those goods to the first-mentioned person or another group member.

- The section also provides that various contracts are not "relevant contracts" for pay-roll tax purposes. These include a contract of service and contracts under which a person, in the course of a business carried on by that person, is supplied with services meeting any of the following criteria:
- the services are incidental to the supply or use of goods by the person who is supplying the services;
- the services are of a kind not ordinarily required in the course of the person's business and which are provided by persons who are genuinely supplying services to the public generally;
- the services are of a kind ordinarily required in the course of the person's business but are required for less than 180 days in a financial year;
- the services are provided by a person for less than 90 days in a financial year;

- none of the above criteria are met, but the Commissioner of State Revenue is satisfied that the services are supplied by a person who ordinarily supplied services of that kind to the public generally in the financial year in respect of which a periodic, annual or final liability is being assessed.

Section 13B further provides that, in some cases, a contract is not a relevant contract where a contractor supplies services to a person, in the course of a business carried on by that person, and uses one or more additional persons to perform the work to which the services relate. Nevertheless, such a contract will be taken to be a relevant contract if the Commissioner of State Revenue is satisfied that the contract or arrangement under which the services were supplied was entered into for the purposes of avoiding tax.

Section 13B also provides that a contract is not a relevant contract if it relates to services supplied by an owner driver, insurance agent or direct selling agent, unless the Commissioner of State Revenue is satisfied that the contract or arrangement under which the services were supplied was entered into for the purposes of avoiding tax.

Finally, section 13B provides that the relevant contract provisions do not apply to employment agency contracts, which are covered by Part 2, new Division 1B.

Section 13C provides rules for determining which of the parties to a relevant contract is taken to be the employer for pay-roll tax purposes.

Section 13D provides rules for determining which of the parties to a relevant contract is taken to be the employee for pay-roll tax purposes.

Section 13E(1) provides that amounts paid or payable by an employer under a relevant contract are taken to be wages for pay-roll tax purposes where those amounts are in relation to the performance of work for which services are supplied or relating to the re-supply of goods on or after 1 July 2008. However, under section 13E(5) where only part of the amount paid or payable relates to the performance or work or re-supply of goods under the contract, the Commissioner of State Revenue has the power to decide how much of the overall amount paid or payable will be taken to be wages for pay-roll tax purposes.

Section 13E(2) also provides that the following are taken to be wages:

- any payment that would be a superannuation contribution if the parties to the relevant contract were actually in a relationship of employer and employee; and

- the value of any grant of a share or option, granted or liable to be granted by the person taken to be the employer, that would be wages under Part 2, new Division 1C if the parties to the relevant contract were actually in a relationship of employer and employee.

Section 13E(3) and (4) ensure that amounts paid or payable on or after 1 July 2008 for the performance of work under a relevant contract are deemed to relate to services supplied or goods re-supplied on or after that date, except to the extent that the Commissioner of State Revenue is satisfied that any part of the amount relates to services supplied or goods re-supplied before that date.

Section 13F is designed to prevent double taxation. Where a person taken to be an employer has paid pay-roll tax in respect of a payment taken to be wages under the contractor provisions, no other person is liable to pay pay-roll tax in respect of that payment, or any other payment for the same work, unless any such payment is made for the purpose of avoiding tax.

New Division 1B – Employment agents

Section 13G defines an "employment agency contract", which includes an agreement, arrangement or undertaking under which am employment agent procures the services of another person ("service provider") for a client of the agent. An employment agency contract does not include arrangements under which a contract of employment results between the service provider and the client.

Section 13H provides that an employment agent under an employment agency contract is taken to be an employer for pay-roll tax purposes.

Section 13I provides that the individual who performs the work for the client of the employment agent is taken to be an employee of the employment agent. It provides that the individual who in fact performs the work is taken to be an employee of the employment agent.

Section 13J provides that any amount paid or payable (or the value of any benefit which would be a fringe benefit or a payment which would be a superannuation contribution) to or in relation to the service provider in respect of the provision of services under the employment agency contract, is taken to be wages paid or payable by the employment agent. However, such a payment or benefit is not taken to be wages it if would be exempt from pay-roll tax under Division 2 of the *Pay-roll Tax Act 1971* (other than section 14(2)(j), (k) or (l) or section 14A) had it been paid or provided by

the client to or in relation to the service provider as an employee. It is a requirement that the employment agent receives a declaration to that effect from the client.

Section 13K is designed to prevent double taxation. Where an employment agent has paid pay-roll tax in respect of an amount or benefit taken to be wages under an employment agency contract, no other person is liable to pay pay-roll tax in respect of wages paid or payable in respect of the provision of services by the service provider for the client. This section is subject to sections 13L and 13LA.

Section 13L provides that if an employment agency contract has the effect of reducing or avoiding the liability of any party to the contract to the assessment, imposition or payment of pay-roll tax, the Commissioner of State Revenue may disregard the contract and determine any party to it to be an employer and any payment in respect of the contract to be wages. A notice of the determination must be served on the person taken to be an employer.

New Division 1C – Shares and options

Section 13M provides that Division 1C applies for new paragraph (j) (as renumbered) of the definition of "wages" in the schedule to the *Pay-roll Tax Act 1971*. Paragraph (j) provides that wages include the grant of a share or option by an employer to an employee or by a company to a director as remuneration for the appointment or services of the director.

Section 13N contains the definitions that are applicable for the share and option provisions in Division 1C.

Section 13O sets out when a share or option is granted and adopts provisions of the *Income Tax Assessment Act 1936* (Cwlth) for this purpose.

Section 13P ensures that, where a grantor has paid any applicable pay-roll tax in respect of the grant of an option, the subsequent grant of a share pursuant to the exercise of that option is not subject to pay-roll tax. Additionally, pay-roll tax is not payable where a grantor grants a share pursuant to the exercise of an option, if the option was granted before 1 July 2008.

Section 13Q provides that wages comprising the grant of a share or option are taken to be paid or payable on the relevant day and further provides that the relevant day is the day that the grantor elects under Division 1C.

Section 13R permits grantors to treat the wages comprising a grant of a share or option as having been paid or payable on the day the share or option is granted to the grantee, or the day on which the share or option vests in the grantee. The vesting day of a share is the day on which the any conditions applying to the grant of the share have been met and the grantee's legal or beneficial interest in the share cannot be rescinded. The vesting day for an option is the earlier of two dates, being the day on which the share to which the option relates is granted to the grantee, or the day on which the grantee exercises a right to have the share transferred or allotted to (or vest in) him or her.

Section 13S provides that, where a grantor does not include the value of a grant of a share option in its taxable wages for a return period in which the grant occurred, the wages comprising the grant are taken to have been paid or payable on the vesting day for the share or option. Where the value of a grant of a share or option is nil, or the wages comprising the grant would not be liable to pay-roll tax on the day of the grant, the wages will be treated as paid or payable on the day that the share or option was granted. This section applies despite section 13R.

Section 13T(1) ensures that pay-roll tax will continue to be payable in respect of a grant of a share or option that is later withdrawn cancelled or exchanged, if it is withdrawn, cancelled or exchanged for consideration. Section 13T(2) also allows a grantor to reduce its taxable wages for a financial year (annual return) or final period (final return), by the value of a grant of a share or option, where it previously paid pay-roll tax on the grant in a periodic return period falling in the financial year or final period, and the grant is subsequently rescinded because the conditions attaching to were not met. Section 13T(3) applies where the rescission of the grant occurs after the end of the financial year or final period. In these circumstances, the Commissioner of State Revenue must make the reassessment of the grantor's liability for pay-roll tax for the financial year or final period to reduce the taxable wages by the value of a grant of a share or option.

Section 13U provides for the valuation of grants of shares or options in accordance with Commonwealth income tax provisions. Any consideration paid by an employee in respect of the share or option is to be deducted from the value of the share or option for pay-roll tax purposes.

Section 13V provides that, where a grant of a share or option comprises wages under the Bill, the services to which those wages relates will be taken to have been performed during the month in which the grant or

vesting (whichever is the relevant day under 13R or 13S) of the share or option occurs. For grants of share of options by a company to a director by way of remuneration for the appointment of the director, the wages are taken to have been for services performed or rendered during the month in which the relevant day falls.

13W provides that wages comprising the grant of a share or option will be taken to be paid or payable in Queensland if the share is a share in a company registered in Queensland or any other body incorporated under a Queensland Act. If the wages are taken to be paid or payable outside Queensland, the grant of a share or option may still be liable to pay-roll tax in Queensland (under section 9 of the *Pay-roll Tax Act 1971*) if the grant is made for services performed or rendered wholly in Queensland. Subsections (3) and (4) provide for the place where wages are taken to be paid or payable for grants of a share or option by a company to a director of the company by way of remuneration for the appointment of the director.

New Division 1D - Allowances

New Subdivision 1Motor vehicle allowances

Section 13X contains the definitions that are applicable for the motor vehicle allowance provisions in Division 1D, Subdivision 1.

Section 13Y provides that wages do not include the exempt component of a motor vehicle allowance, calculated in accordance with this section. An employer need only pay pay-roll tax on the amount of the motor vehicle allowance that exceeds the exempt component. The exempt component is a function of the number of exempt kilometres travelled during the return period and the rate (being a rate prescribed by regulation under the *Income Tax Assessment Act 1997* (Cwlth) or otherwise as prescribed by regulation under the Bill). The number of exempt kilometres travelled is worked out under section 13Z.

Section 13Z sets out the methods that may be chosen or approved for working out the number of exempt kilometres.

Section 13ZA provides for certain records to be kept by an employer if the employer elects to use the continuous recording method for determining the number of exempt kilometres travelled during a return period.

Section 13ZB sets out how the averaging method works. It allows employers to record the percentage of kilometres travelled for business to total kilometres travelled in the averaging period, and then use this

percentage to determine exempt kilometres travelled for the remainder of the financial year, as well as the next 4 financial years.

Section 13ZC provides for certain records to be kept by an employer if the employer elects to use the averaging method for determining the number of exempt kilometres travelled during a return period.

Section 13ZD stipulates that the averaging period for the averaging method of recording exempt kilometres travelled is a continuous period of at least 12 weeks. The averaging period may overlap the start or end of a financial year.

Section 13ZE sets out when an employer is required to recalculate the relevant percentage for working out the number of exempt kilometres travelled using the averaging period.

Section 13ZF provides that an employer, which has elected to use the averaging method, may replace one motor vehicle with another vehicle motor vehicle and sets out the additional records that are required to be kept. An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.

Section 13ZG provides that an employer may change from using the averaging method to the continuous recording method or vice versa, from the beginning of a financial year.

New Subdivision 2 Accommodation allowances

Section 13ZH provides that wages only include an accommodation allowance paid or payable to an employee for a night's absence from his or her usual place of residence to the extent it exceeds the exempt rate. The exempt rate is ascertained by reference to Australian Taxation Office determinations in respect of reasonable daily travel allowance expenses, or is otherwise prescribed by regulation under the Bill.

Clause 10 amends section 14(2) of the *Pay-roll Tax Act 1971* by inserting new paragraphs (k) and (l) and new subsection (8). Section 14(2)(k) provides an exemption from pay-roll tax for wages paid or payable to employees who are absent from work on volunteer fire fighting, fire prevention or associated activities, who are absent from work on volunteer emergency service duties or who are absent from work volunteering as honorary ambulance officers. Subsection (8) provides that the exemptions do not apply to wages paid or payable as part of annual, long service, recreation or sick leave. Section 14(2)(l) provides that wages are exempt from pay-roll tax if they are paid or payable to an Aboriginal person or

Torres Strait Islander who is employed under an employment project of the Community Development Employment Project.

Clause 11 inserts new section 14A into the *Pay-roll Tax Act 1971*. Section 14A provides an exemption from pay-roll tax in respect of paid parental leave and paid adoption leave. Employers providing paid parental or adoption leave are entitled to an exemption from tax for any wages paid or payable to am employee, up to a maximum of 14 weeks' maternity leave, paternity leave or adoption leave. Section 14A(5) provides that an employer wishing to claim an exemption for paid parental or adoption leave must obtain certain records and keep them for a period of at least 5 years, as required by section 118 of the *Taxation Administration 2001*.

Clause 12 inserts a note for section 50(2) of the *Pay-roll Tax Act 1971* to explain that other provisions of the Act also apply for avoidance arrangements relating to employment agency contracts.

Clause 13 makes consequential amendments to section 51 of the *Pay-roll Tax Act 1971* to reflect the changes made by the introduction of employment agents provisions in new Division 1D and the introduction of the new grouping provisions. To ensure the continued operation of this provision, new definitions of "employment agent" and "employment agency contract" are also inserted for this section. Clause 13 also relocates and renumbers this section in Part 2, Division 1B as section 13LA.

Clause 14 inserts new Division 8 into Part 2 of the *Pay-roll Tax Act 1971*.

New section 51 ensures that payments of money or provision of other consideration, which is referable to an employee's services to his or her employer, is taken to be wages paid or payable by the employer to the employee (and therefore subject to pay-roll tax), even if the amount is paid, or the benefit is provided by:

- a third party to the employee; or
- the employer to a third party; or
- a third party to a third party.

The same principles apply to payments of money or provision of other consideration by way of remuneration for the appointment or services of a company director.

Section 51A provides for the joint and several liability of every member of a group where any one of them fails to pay an amount required under the *Pay-roll Tax Act 1971*. The Commissioner of State

Revenue is entitled to recover the whole amount payable from any member of the group. This section is subject to sections 34(2) and 42(2).

Clause 15 replaces Part 4, Divisions 1 and 2 of the *Pay-roll Tax Act 1971* with new Part 4, Divisions 1-2A.

Division 1 – Interpretation

Section 66 provides definitions of "business" and "related body corporate" for the purposes of Part 4 of the *Pay-roll Tax Act 1971*.

Section 67 provides that the fact that a person is not a member of a group constituted under one of the grouping provisions does not prevent them from being a member of a group constituted under any of the other grouping provisions.

Division 2 – Business groups

Section 68 ensures that when two or more groups form part of a larger group, the two or more smaller groups are not considered as groups in their own right.

Section 69 provides that corporations constitute a group if they are related bodies corporate. The Commissioner of State Revenue has no discretion to exclude such corporations from a group constituted under this section.

Section 70 provides for groups arising from the inter-use of employees. Where:

- one or more employees of an employer perform duties for one or more businesses carried on by the employer and one or more other persons; or
- one or more employees of an employer are employed solely or mainly to perform duties for one or more businesses carried on by one or more other persons; or
- one or more employees of an employer perform duties for one or more businesses carried on by one or more other persons, being duties performed in connection with or in fulfilment of the employer's obligation under an agreement, arrangement or undertaking for the provision of services to any of those persons,

the employer and each of those other persons constitute a group.

Section 71 provides for groups arising through common control of two businesses. Under this section, a group exists where a person, or a set of

persons, has a controlling interest in each of two businesses. The entities carrying on the businesses are grouped. The rules for determining whether a person (or set of persons) has a controlling interest in a business vary depending upon the type of entity conducting the business (e.g. a corporation, partnership or trust), and generally relate to the level of ownership or control of the business, or of the entity conducting the business.

In some circumstances, a person or set of persons will be taken to have a controlling interest in a business on the basis that a related person or entity has a controlling interest in that business. More specifically:

- if a corporation has a controlling interest in a business, any related body corporate of the corporation will also be taken to have a controlling interest in the business;
- if a person or set of persons has a controlling interest in a business and the person or set of persons who carry on that business has a controlling interest in another business, the first-mentioned person or set of persons is taken to have a controlling interest in the second-mentioned business;
- if a person or set of persons has a controlling interest in the business of a trust, and the trustee(s) of the trust has a controlling interest in the business of another entity (being a trust, corporation or partnership), the person or set of person is taken to have a controlling interest in the business of that other entity.

Section 72 provides for groups arising from the tracing of interests in a corporation. Under this section, a relevant entity (being a person or 2 or more associated persons – see section 74B), and a corporation constitute a group if the entity has a controlling interest in the corporation. Such a controlling interest exists if the relevant entity has a direct interest, an indirect interest or an aggregate interest in the corporation, and the value of that interest exceeds 50%. Division 2A applies in making this determination.

Section 73 provides that, where any person is a member of 2 or more groups, those groups will form a single group. Under section 68, the smaller groups which have been subsumed cease to exist as groups for the purposes of the *Pay-roll Tax Act 1971*.

Section 74 provides the Commissioner of State Revenue with a discretion to exclude a member from a group if satisfied that the business conducted

by that member is independent of, and not connected with, the business conducted by another member of the group. In considering the application of this discretion, the Commissioner of State Revenue will have regard to the nature and degree of ownership and control of the businesses, the nature of the businesses, and any other relevant matters. The discretion is not available for corporations that are related bodies corporate.

Division 2A – Business groups-interpretation provisions for tracing of interests in corporations

Section 74A applies this Division for the purposes of grouping a relevant entity with a corporation under section 72.

Section 74B contains definitions that are applicable for this Division.

Section 74C defines who "associated persons" are.

Section 74D defines who "related persons" are. In particular, for this definition, section 74D(2) provides that a "de facto partner" means 1 of 2 persons who is a de factor partner within the meaning of section 32DA of the *Acts Interpretation Act 1954*, if the persons are living, and for at least 2 years have lived, together as a couple on a genuine domestic basis within the meaning of that Act, or have so lived together as a couple for at least 2 years. This meaning has been adopted to maintain consistency with other revenue legislation administered by the Commissioner of State Revenue.

Section 74E provides that a relevant entity has a direct interest in a corporation if the entity can directly or indirectly exercise, control the exercise, or substantially influence the exercise of voting power attached to voting shares in the corporation. The section also provides that the percentage interest of voting power which a relevant entity controls is the percentage of total voting power which the entity can exercise, control the exercise of, or substantially influence the exercise of.

Section 74F provides that a relevant entity has an indirect interest in a corporation (called the indirectly controlled corporation) if the entity is linked to that corporation by a direct interest in another corporation (called the directly controlled corporation) that has a direct and/or an indirect interest in the indirectly controlled corporation. The section also provides that the value of an indirect interest in an indirectly controlled corporation is worked out by multiplying the value of the relevant entity's direct interest in the directly controlled corporation by the value of the directly controlled corporation's interest in the indirectly controlled corporation.

Section 74G provides that a relevant entity has an aggregate interest in a corporation when it has either a direct interest and one or more indirect interests, or two or more indirect interests. The section also provides that the value of a relevant entity's aggregate interest is the sum of the entity's direct and indirect interests in that corporation.

Clause 16 amends section 80 of the *Pay-roll Tax Act 1971* by updating the reference to the new exclusion order provision contained in section 74.

Clause 17 amends the heading for Part 7 of the *Pay-roll Tax Act 1971*.

Clause 18 inserts a new Part 8 of the *Pay-roll Tax Act 1971* dealing with transitional provisions for the Bill.

Section 131 provides that, other than certain specific amendments, the amendments to the *Pay-roll Tax Act 1971* made by this Bill are intended to enhance the consistency of the Act with the pay-roll tax legislation in NSW and VIC. In particular, it confirms that any variations in language used in the amended provisions are not intended to alter the meaning of the corresponding provisions in the NSW and VIC pay-roll tax legislation.

Section 132 provides that the amendments made by the Bill apply in relation to wages paid or payable on or after 1 July 2008.

Section 133 provides that section 13L inserted by this Bill, applies to employment agency contracts made before, on or after 1 July 2008.

Section 134 saves exclusion orders made by the Commissioner of State Revenue under the previous provisions relating to exclusion for grouping where the composition of the group has not changed. These exclusion orders are taken to be an exclusion order under the new section 74(1).

Clause 19 makes amendments to the Dictionary contained in the Schedule to the *Pay-roll Tax Act 1971* by omitting certain definitions and inserting new definitions.

In particular, *clause 19(2)* inserts a new definition of "director" which applies for the *Pay-roll Tax Act 1971* (other than Part Division 1C which has a specific definition), which includes a member of the governing body of the company. In particular, this extended definition will apply for the grouping provisions in Part 4 of the Act.

In particular, *clause 19(3)* expands the definition of "employer" to include any person taken to be an employer under another provision of the *Pay-roll Tax Act 1971*.

In particular, *clause 19(4)* amends the definition of "wages" to specifically refer to remuneration.

In particular, *clause 19(5)* removes from the definition of "wages" the reference to 'wages paid or payable in relation to an employee or applied for the employee's benefit' as new section 51A has been inserted to cover third party payments.

In particular, *clause 19 (9)* inserts into the definition of "wages" new paragraph (j) to include any amount taken to be wages under another provision of the *Pay-roll Tax Act 1971*.

In particular, *clause 19(10)* renumbers paragraphs (g) to (k) in the definition of "wages" as paragraphs (f) to (j).