

Queensland



# **PAY-ROLL TAX ACT 1971**

**Reprinted as in force on 1 March 2002  
(includes amendments up to Act No. 72 of 2001)**

**Reprint No. 3A**

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This Act is reprinted as at 1 March 2002. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



## PAY-ROLL TAX ACT 1971

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# PAY-ROLL TAX ACT 1971

[as amended by all amendments that commenced on or before 1 March 2002]

**An Act to impose a tax upon employers in respect of certain wages; to provide for the assessment and collection of the tax; and for purposes connected therewith**

## PART 1—PRELIMINARY

### 1 Short title

This Act may be cited as the *Pay-roll Tax Act 1971*.

### 3 Interpretation

(1) In this Act—

“**agent**”, for the definition “**employment agent**”, means an individual or company (whether or not the individual or company is acting as a trustee).

“**agent**” includes every person who in Queensland, for or on behalf of another person outside Queensland, holds or has the management or control of the business of that other person and every person who, by an order of the commissioner, is declared to be an agent or the sole agent for any other person for the purposes of this Act and on whom notice of that order has been served.

“**approved form**” see section 50A.<sup>1</sup>

“**Australia**” means the States.

“**client**”, for the definition “**employment agent**”, means an individual or company (whether or not the individual or company is acting as a trustee).

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1 Section 50A (Approval of forms)

“**commissioner**” means the person holding office as Commissioner of Pay-roll Tax under this Act.

“**Commonwealth Act**” means the *Pay-roll Tax Assessment Act 1941* (Cwlth).

“**company**” includes all bodies and associations (corporate and unincorporate) and partnerships.

“**corporation**” see the Corporations Act.

“**corresponding law**” means—

- (a) in relation to Queensland—a law in force in Queensland imposing on employers a tax on wages paid or payable by them and the assessment and collection of the tax, but does not include the Commonwealth Act or this Act; and
- (b) in relation to another State—means a law in force in the State imposing on employers a tax on wages paid or payable by them and the assessment and collection of the tax, but does not include the Commonwealth Act.

“**designated group employer**”, in relation to a group, means the member of that group who under section 16I is for the time being the designated group employer in respect of that group.

“**employer**” means any person who pays or is liable to pay any wages and includes the Crown in right of the State of Queensland and any person who is an employment agent.

“**employment agent**” means an agent that, by an arrangement, procures (either directly or indirectly through interposed individuals, companies or trusts) the services of an individual (the “**worker**”) for a client (other than the agent or worker) if, under the arrangement—

- (a) the worker does not become the employee of either the agent or the client but does carry out functions similar to the functions of an employee; and
- (b) remuneration is paid, or is payable, (either directly or indirectly) by the agent to—
  - (i) the worker; or
  - (ii) an individual (other than the worker), whether or not as trustee; or
  - (iii) a company, whether or not as trustee;



for services supplied, or to be supplied, by the worker to the client;  
and

- (c) the agent receives, or is entitled to receive, (either directly or indirectly) a payment (whether by way of a lump sum or ongoing fee) during or for the period in which the services are supplied by the worker to the client.

**“foreign wages”** means wages that are not taxable wages and are not interstate wages.

**“fringe benefit”** means—

- (a) a benefit that, in relation to an employee, or an employer of an employee, is a fringe benefit under the Fringe Benefits Assessment Act; or
- (b) anything prescribed by regulation to be a fringe benefit;  
but does not include—
- (c) a car parking fringe benefit within the meaning of that Act; or
- (d) anything prescribed by regulation not to be a fringe benefit.

**“Fringe Benefits Assessment Act”** means the *Fringe Benefits Tax Assessment Act 1986* (Cwlth).

**“group”** means a group constituted under part 4A.

**“interstate wages”** means wages that are taxable wages within the meaning of a corresponding law.

**“liquidator”** means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company.

**“paid or payable”**, in relation to wages that are fringe benefits, means—

- (a) paid;
- (b) if another meaning is prescribed by regulation—that meaning.

**“pay”**, in relation to wages, includes provide, confer and assign.

**“pay-roll tax”** means pay-roll tax chargeable under section 7.

**“return period”**, in relation to an employer, means a period relating to which that employer is required to furnish a return under this Act.

**“superannuation contribution”** see section 3A.

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**“tax”** means pay-roll tax, further tax, additional tax or penal tax imposed by or under this Act.

**“taxable wages”** means wages that, under section 6, are liable to pay-roll tax.

**“trustee”**, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, includes—

- (a) an executor or administrator, guardian, committee, receiver or liquidator; and
- (b) every person having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of any real or personal property of a person under any legal or other disability.

**“voting share”** see the Corporations Act, part 1.2, section 9.

**“wages”** means any wages, salary, commission, bonuses or allowances paid or payable (whether at piecework rates or otherwise and whether paid or payable in cash or in kind) to, or in relation to, an employee as an employee, or applied for the employee’s benefit, and, without limiting the generality of the foregoing, includes—

- (a) any amount paid or payable by way of remuneration to a person holding office under the Crown in right of the State of Queensland or in the service of the Crown in right of the State of Queensland; and
- (b) any amount paid or payable under any prescribed classes of contracts to the extent to which that payment is attributable to labour; and
- (c) any amount paid or payable by a company by way of remuneration to a director or member of the governing body of that company; and
- (d) any amount paid or payable by way of commission to an insurance or time payment canvasser or collector; and
- (e) the provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee’s services; and

- (f) remuneration mentioned in the definition “**employment agent**”, paragraph (b); and
- (g) fringe benefits; and
- (h) a superannuation contribution, other than a superannuation contribution for the employee’s services performed or rendered before 1 January 2000.

(2) For the purposes of this Act, the Australian Capital Territory (including the Jervis Bay Territory) and the Northern Territory shall be deemed to be States.

(3) Where, for the purposes of this Act, it is necessary—

- (a) to reduce an amount by a fixed sum for each other fixed sum by which another amount exceeds another amount or a certain proportion of a third amount; or
- (b) to calculate the proportion that one amount bears to another amount; or
- (c) to calculate an amount in accordance with a formula;

and, but for this subsection, 1 or more of those amounts or an amount included in the formula would be amounts of dollars and cents, the cents shall be disregarded.

### **3A Meaning of “superannuation contribution”**

(1) A “**superannuation contribution**” is a monetary or non-monetary contribution paid or payable by an employer for an employee—

- (a) as a superannuation guarantee charge under the Superannuation Guarantee Act; or
- (b) to a superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cwlth); or
- (c) to another form of superannuation, provident or retirement fund or scheme, including, for example, the following—
  - (i) a superannuation holding accounts reserve under the *Small Superannuation Accounts Act 1995* (Cwlth);
  - (ii) a retirement savings account under the *Retirement Savings Accounts Act 1997* (Cwlth);
  - (iii) a wholly or partly unfunded fund or scheme.

*Examples of ‘non-monetary contribution’—*

1. Marketable securities.
2. Real property.

**(2)** In this section—

**“Superannuation Guarantee Act”** means the *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

**“superannuation guarantee charge”** does not include the following—

- (a) an additional superannuation guarantee charge under section 49 or part 7<sup>2</sup> of the *Superannuation Guarantee Act*;
- (b) the part of a superannuation guarantee charge equal to a superannuation contribution mentioned in subsection (1)(b) or (c) that is payable, and for which pay-roll tax has been paid to the commissioner, to the extent the contribution would have resulted in a reduction in the charge percentage under section 23<sup>3</sup> of the *Superannuation Guarantee Act* if the contribution had been paid.

**“unfunded”**, for a superannuation, provident or retirement fund or scheme, means the extent that an amount paid or payable by an employer for an employee covered by the fund or scheme is not paid or payable while the employee is employed by the employer.

### **3B Other provisions about meaning of “wages”**

**(1)** This section applies for the definition of **“wages”** in section 3(1).

**(2)** For subsection (1)(h) of the definition, a superannuation contribution paid or payable on or after 1 January 2000 is taken to be for an employee’s services performed or rendered on or after 1 January 2000.

**(3)** However, if the commissioner is satisfied any part of a superannuation contribution mentioned in subsection (2) is for an employee’s services performed or rendered before 1 January 2000, the part is not wages.

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2 *Superannuation Guarantee (Administration) Act 1992* (Cwlth), section 49 (Unpaid superannuation guarantee charge) or part 7 (Penalty charge)

3 *Superannuation Guarantee (Administration) Act 1992* (Cwlth), section 23 (Reduction of charge percentage if contribution made to RSA or to a fund other than defined benefit superannuation scheme)

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(4) Also, for subsection (1)(h) of the definition—

- (a) a superannuation contribution paid or payable by an employer to a superannuation, provident or retirement fund or scheme and not attributed by the employer as paid or payable for a particular employee or particular employees is taken to be paid or payable for the employee or employees decided by the commissioner; and
- (b) a superannuation contribution paid on or after 14 September 1999 and before 1 January 2000 for an employee's services to be performed or rendered on or after 1 January 2000 is taken to be paid on 1 January 2000.

(5) For the purposes of this Act, a reference to wages does not include a reference to—

- (a) an allowance for travelling or accommodation paid or payable at a rate in a particular case or class of case that does not exceed such rate as is prescribed in respect of that case or class of case; or
- (b) where the rate of an allowance for travelling or accommodation is so prescribed in respect of a particular case or class of case—such portion of an allowance paid or payable in respect of such a case or class of case as equals the amount calculated at such rate as is prescribed in respect of that case or class of case.

(6) For this Act, the amount or value of wages paid or payable to a person must be reduced by the relevant proportion of the amount of any GST paid or payable by the person on the supply to which the wages relate.

(7) In this section—

**“relevant proportion”**, for GST paid or payable on a supply to which wages relate, means the proportion that the amount or value of the wages bears to the consideration for the supply to which the wages relate.

## **PART 2—ADMINISTRATION**

### **4 Commissioner of Pay-roll Tax**

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

(2) The Commissioner of Pay-roll Tax shall be the person from time to time holding office as the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001*.

#### **4A Delegations**

(1) The commissioner may delegate the commissioner's powers under this Act to an appropriately qualified public service employee.

(2) A delegation of a power may permit the subdelegation of the power to an appropriately qualified public service employee.

### **5 Disclosure of information**

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

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

Maximum penalty—20 penalty units.

(2) The commissioner may communicate any matter which comes to the commissioner's knowledge in the exercise or performance of the commissioner's powers and duties under this Act to—

- (a) a person for the administration or enforcement of this Act or an Act administered by the Commissioner of State Revenue under the *Taxation Administration Act 2001*; or
- (c) a person for the administration or enforcement of a recognised law under the *Taxation Administration Act 2001*; or

- (d) the Australian Statistician appointed under the *Australian Bureau of Statistics Act 1975* (Cwlth) under a lawful requirement of the statistician.

(3) If, under subsection (2), information is disclosed to another person, the person must not disclose the information to anyone else other than to the extent necessary to enable the person to exercise a power or perform a function conferred on the person under the law for the administration or enforcement of the law.

Maximum penalty—100 penalty units.

### **PART 3—LIABILITY TO TAXATION**

#### **6 Wages liable to pay-roll tax**

(1) Subject to section 10, the wages liable to pay-roll tax under this Act are wages that are paid or payable by an employer after the month of August 1971 (whether in respect of services performed or rendered before, during or after that month), and—

- (a) that are paid or payable in Queensland, other than wages so paid or payable to a person for services performed or rendered—
- (i) entirely in another State; or
  - (ii) entirely outside Australia for more than 6 months after wages were first paid to the person for the services; or
- (b) that are paid or payable elsewhere than in Queensland in respect of services performed or rendered wholly in Queensland;

except wages that—

- (c) are paid after the month of August 1971, but were payable during or before that month; and
- (d) have been included in a return made under the Commonwealth Act.

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

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

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

## **7 Imposition of pay-roll tax on taxable wages**

Subject to, and in accordance with, the provisions of this Act, there shall be charged, levied and paid for the use of Her Majesty on all taxable wages pay-roll tax at the following rate of the wages—

- (a) for wages paid or payable before 1 July 2000—5%;
- (b) for wages paid or payable on and from 1 July 2000 to 30 June 2001—4.9%;
- (c) for wages paid or payable on and from 1 July 2001—4.8%.

## **8 Employer to pay pay-roll tax**

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



**8A Value of taxable wages**

(1) The value of taxable wages that are paid or payable in kind (other than fringe benefits under the Fringe Benefits Assessment Act) is the value under the regulations.

(1A) The employer must give evidence of the value of the taxable wages to the commissioner if asked by the commissioner.

(1B) If the commissioner is not satisfied with the evidence given by the employer, the commissioner may appoint a person to value the taxable wages.

(1C) If the value stated by the person appointed under subsection (1B) is more than the value stated by the employer, the commissioner may claim all or part of the valuation costs from the employer.

(1D) The amount of costs claimed is a debt payable to the State.

(2) The value of taxable wages that are fringe benefits under the Fringe Benefits Assessment Act is the value that would be the taxable value of the benefits as fringe benefits under that Act, unless otherwise prescribed by regulation under this Act.

**9 Deduction from taxable wages**

(1) In this section—

“**interstate wages**” does not include interstate wages paid or payable by a member of a group.

“**prescribed amount**” means the greater of zero and the amount calculated using the formula—

$$P = \frac{FME}{G} - \frac{1}{3} \left[ TW - \frac{FME}{G} \right]$$

where—

“**E**” (maximum deduction per month) means—

- (a) in the period starting on 1 July 1997 and ending on 31 December 1997—66 667; and
- (b) in a period starting on or after 1 January 1998—70 833.

“**F**” means the number of days in the return period for which an employer pays, or is liable to pay, taxable wages.

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“**G**” means the total number of days in the return period.

“**M**” means the number of months in the return period to which the return relates.

“**P**” means the prescribed amount in dollars.

“**TW**” means the amount of taxable wages paid or payable in the return period.

“**taxable wages**” does not include taxable wages paid or payable by a member of a group.

(3) For the purpose of ascertaining the pay-roll tax payable by an employer who pays or is liable to pay taxable wages for the whole of a return period but does not pay and is not liable to pay interstate wages during that return period, there shall be deducted, for that return period, from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to that return period) the prescribed amount.

(4) If a return is for a return period that is partly before and partly after 1 January 1998, the prescribed amount must be calculated as if 1 return had been lodged for the part of the return period before 1 January 1998 and a separate return had been lodged for the part of the return period starting on 1 January 1998.

(5) An employer who during any return period pays or is liable to pay taxable wages and interstate wages may, by notice in writing in the approved form, served on the commissioner, nominate an amount, calculated in the prescribed manner, not exceeding the prescribed amount, as the deduction that the employer claims to be entitled to make for that return period and for subsequent return periods.

(6) For the purpose of ascertaining the pay-roll tax payable by an employer who has served on the commissioner a notice under subsection (5) there shall, subject to subsection (7), be deducted for a return period (being the return period ending last before the day on which the employer served that notice on the commissioner or any subsequent return period), from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) the amount nominated in that notice.

(7) The commissioner may, on an application made to the commissioner in writing by an employer who pays or is liable to pay taxable wages and interstate wages during any return period or of the commissioner’s own

motion in relation to such an employer at any time, make a determination specifying an amount, not exceeding the prescribed amount, that may be deducted for any return period specified or referred to in the determination (being a return period commencing before or after, or the return period in which, the determination is made) from the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) and there shall be deducted, for any such return period, from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) the amount so specified.

(8) The commissioner may, at any time by instrument in writing, revoke a determination made under subsection (7) and any such revocation shall have effect on and from the first day of the return period specified in the instrument, whether that return period is before, but not before the date of the determination, or after, or the return period in which, the instrument is executed by the commissioner.

(9) The commissioner shall, as soon as practicable after making a determination under subsection (7), serve notice of the determination on the employer concerned.

## **10 Exemption from pay-roll tax**

(1) In this section—

**“associated religious body”** means a body—

- (a) which appertains to or is controlled by a religious institution; and
- (b) the principal object and pursuit of which is the conduct of activities of a religious nature.

**“exempt charitable institution”** means—

- (a) a public benevolent institution or the trustees of such an institution; or
- (b) an institution or the trustees of an institution the principal object and pursuit of which is—
  - (i) the relief of poverty; or
  - (ii) the care of sick, aged, infirm, afflicted or incorrigible persons or of children; or
  - (iii) any 2 or more of those objects and pursuits; or

- (c) an institution, or the trustees thereof, declared by the Minister in the Minister's discretion to be an institution to which this paragraph applies, the principal object and pursuit of which is the fulfilling of a charitable object or an object promoting the public good (not being an object or pursuit that is a sporting, recreational, leisure or social pursuit or object or an object or pursuit declared under a regulation for the purposes of this paragraph); or
- (d) a non-tertiary educational institution or the trustees of such an institution; or
- (e) a religious institution or an associated religious body or the trustees of such an institution or body.

For the purposes of this definition—

- (f) an institution is not an institution of the kind described in paragraph (a), (b), (c) or (d) unless the constitution, by whatever name called, of that institution provides—
  - (i) that the income and property of the institution is to be used and applied solely for the promotion of the objects of the institution and that no portion of the income or property will be distributed, paid or transferred by way of dividend, bonus or otherwise amongst its members; and
  - (ii) that on dissolution the assets of the institution remaining after satisfaction of all liabilities must be transferred to some institution having similar objects;
- (g) the care of sick, aged, infirm, afflicted or incorrigible persons means care which relates directly to and is necessary because of the persons so cared for being sick, aged, infirm, afflicted or incorrigible;
- (h) the care of children means being responsible for children on a full-time basis and providing them with all necessary food, clothing and shelter and providing for their general wellbeing and protection;
- (i) in exercising discretion under paragraph (c) the Minister may have regard to the commercial activities of the institution.

**“non-tertiary educational institution”** means an institution, not carried on by or on behalf of the State, the principal object and pursuit of which is—

- (a) the education of students in primary or secondary schools, or both; or
- (b) the conduct of a rural training school; or
- (c) the conduct of a kindergarten or preschool; or
- (d) any 2 or more of those objects and pursuits.

**“qualifying exempt purpose”** means—

- (a) a public benevolent purpose; or
- (b) the purpose of the relief of poverty; or
- (c) the purpose of care of sick, aged, infirm, afflicted or incorrigible persons or of children; or
- (d) the purpose of activities of a religious nature; or
- (e) any 2 or more of those purposes; or
- (f) in the case of an institution to which the definition **“exempt charitable institution”**, paragraph (c) applies—
  - (i) the purpose which in the opinion of the Minister is that institution’s principal object and pursuit; or
  - (ii) the purpose referred to in subparagraph (i) and any 1 or more of the purposes specified in paragraphs (a) to (d).

**“religious institution”** means an institution which the commissioner is satisfied is a religious institution.

For the purposes of this definition—

- (a) the commissioner is entitled not to be satisfied that an institution is a religious institution where the members or followers of the institution do not subscribe to common articles of faith or beliefs which are formally documented;
- (b) the commissioner may, having regard to—
  - (i) whether the institution is formally constituted; and
  - (ii) the number of members or followers of that institution in Queensland; and
  - (iii) the period of time during which the institution has been established; and
  - (iv) whether the institution has a ministry, by whatever name called, which is devoted to the propagation or practice of the

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faith or beliefs of the institution and regularly conducts religious services for members or followers of the institution for religious worship or meditation; and

- (v) whether it is usual for members of the institution to meet at a place clearly identifiable as a place at which such persons meet to engage in religious worship or meditation; and
- (vi) whether members of the institution's ministry have undergone a formal training program to qualify for that ministry;

determine an institution to be or not to be a religious institution.

(2) The wages liable to pay-roll tax under this Act do not include wages paid or payable—

- (a) by the Governor of a State; or
- (b) by a public hospital to a person during a period in respect of which the person is engaged exclusively in work of the hospital of a kind ordinarily performed in connection with the conduct of public hospitals; or
- (c) by an exempt charitable institution in respect of an exempt charitable institution to a person during a period in respect of which the person is engaged exclusively—
  - (i) in the work of the secondmentioned exempt charitable institution for a qualifying exempt purpose; or
  - (ii) where that secondmentioned exempt charitable institution is—
    - (A) a hospital, in the work of that hospital of a kind ordinarily performed in connection with the conduct of a hospital; or
    - (B) a non-tertiary educational institution, in the work of that institution of a kind ordinarily performed in connection with the conduct of a non-tertiary educational institution of the relevant kind; or
- (da) by a teachers' training college (that is not a college of advanced education) declared under a regulation made for the purposes of this paragraph, in respect of such period (whether commencing before or after the commencement of the *Pay-roll Tax Act Amendment Act 1985*, section 6) as is specified under a regulation unless within any period so specified the college

becomes a college of advanced education whereupon the exemption shall cease to apply; or

- (e) by a local government, except to the extent that those wages are paid or payable—
  - (i) for or in connection with; or
  - (ii) for or in connection with the construction of any buildings or the construction of any works or the installation of plant, machinery or equipment for use in or in connection with; electricity generation, distribution or supply, water supply, sewerage, the conduct of transport services (including ferries), of abattoirs, of public markets, of parking stations, of quarries, of cemeteries, of picture theatres, of milk supply, of hostels, of hotels or of bakeries or of any other activity that is a prescribed activity; or
- (f) to members of his or her official staff by—
  - (i) a consular or other representative (other than a diplomatic representative) in Australia of the government of any other part of Her Majesty's dominions or of any other country; or
  - (ii) a trade commissioner representing in Australia any other part of Her Majesty's dominions; or
- (g) by the Commonwealth War Graves Commission; or
- (h) by the Australian-American Educational Foundation; or
- (i) to a person who is a member of the defence force of the Commonwealth or of the armed force of any part of Her Majesty's dominions, being wages paid or payable by reason of the person being such a member by the employer from whose employment the person is on leave; or
- (j) to a person who is an apprentice or trainee under the *Training and Employment Act 2000*, as the apprentice or trainee, for the period of the person's apprenticeship or traineeship.

## **11 Exemption from pay-roll tax—certain CWA wages**

(1) CWA is not required to lodge a return.

(2) Sections 9, 11B and 11C apply to CWA as if—

- (a) in section 9(1), the words in the definition “**prescribed amount**” were ‘means all taxable wages paid or payable by CWA in the return period’; and
- (b) the words in section 11B(1)(b) were ‘all taxable wages paid or payable by CWA during the financial year’; and
- (c) in section 11C(1), in the definition “**total amount of pay-roll tax**”, the words in paragraph (b) were ‘all taxable wages paid or payable by CWA during the prescribed period’.

(3) However, CWA is required to lodge a return and subsection (2) does not apply if—

- (a) wages are paid or payable by CWA in carrying on a business activity predominantly on a commercial basis (“**CWA’s commercial wages**”); or
- (b) CWA is a member of a group.

(4) If only subsection (3)(a) applies, tax payable is the amount bearing the same proportion to tax payable on CWA’s taxable wages as CWA’s commercial wages bear to taxable wages before deducting the prescribed amount.

(5) If subsection (3)(b) applies, the annual amount of tax payable by the members of the group must be reduced by an amount bearing the same proportion to the tax payable as CWA’s taxable wages (other than CWA’s commercial wages) bear to the taxable wages paid or payable by the members of the group.

(6) For this section, a business activity by CWA is taken to be conducted on a commercial basis if it is conducted in a similar way to similar business activities conducted by anyone else on a commercial basis.

(7) For this section, a business activity does not include—

- (a) the conduct of a student hostel; and
- (b) the conduct of a hostel subsidised under the *Aged or Disabled Persons Care Act 1954* (Cwlth); and
- (c) an activity of a type prescribed under a regulation.

(8) In this section—

“**CWA**” means Queensland Country Women’s Association.



**11A Interpretation**

(1) In this section and in sections 11B and 11C—

“**interstate wages**” does not include interstate wages paid or payable by a member of a group.

“**taxable wages**” does not include taxable wages paid or payable by a member of a group.

(2) In sections 11B(1) and 11C(1), a reference to the prescribed amount in relation to an employer is a reference to the greater of zero and the amount calculated—

(a) for the financial year starting on 1 July 1997—using the formula—

$$P = \frac{TW}{TW + IW} \left[ \frac{JA + KB}{365} - \frac{1}{3} \left( TW + IW - \frac{JA + KB}{365} \right) \right]; \text{ and}$$

(b) for the financial years starting on 1 July 1998 and afterwards—using the formula—

$$P = \frac{TW}{TW + IW} \left[ \frac{KC}{365} - \frac{1}{3} \left( TW + IW - \frac{KC}{365} \right) \right].$$

(2A) In the formulas in subsection (2)—

“**A**” means—

- (a) if paragraph (b) does not apply—the number of days in the part of the financial year starting on 1 July and ending on 31 December for which an employer pays, or is liable to pay, wages (disregarding foreign wages); or
- (b) if an employer pays, or is liable to pay, wages (disregarding foreign wages) for the whole of the part—182.5.

“**B**” means—

- (a) if paragraph (b) does not apply—the number of days in the part of the financial year starting on 1 January and ending on 30 June for which an employer pays, or is liable to pay, wages (disregarding foreign wages); or
- (b) if an employer pays, or is liable to pay, wages (disregarding foreign wages) for the whole of the part—182.5.

“C” means the sum of A+B.

“IW” means the amount of interstate wages paid or payable in the financial year.

“J” means 800 000.

“K” means 850 000.

“P” means the prescribed amount in dollars.

“TW” means the amount of taxable wages paid or payable in the financial year.

(3) Despite subsection (2), if a person who did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year satisfies the commissioner that, by reason of the nature of the person’s trade or business, the taxable wages and interstate wages (if any) paid or payable by the person fluctuate with different periods of the financial year, the commissioner may treat the person—

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

## **11B Annual adjustments**

(1) In this section—

“**annual amount of pay-roll tax**”, in relation to an employer, means the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 7 to the difference between—

- (a) the total of the taxable wages paid or payable by that employer during a financial year; and
- (b) the prescribed amount (if any).

(2) Where taxable wages are paid or payable by an employer during a financial year—

- (a) the commissioner shall, on an application made by that employer in accordance with subsection (3), where the amount of pay-roll tax paid or payable by that employer when the employer made the returns relating to that financial year is greater than the

annual amount of pay-roll tax in relation to that employer for that financial year, refund or rebate to that employer an amount equal to the difference reduced by any amount refunded to the employer under section 19; or

- (b) that employer shall, where the amount of pay-roll tax paid or payable by that employer when the employer made the returns relating to that financial year is less than the annual amount of pay-roll tax in relation to that employer for that financial year, pay to the commissioner as pay-roll tax, within the period during which the employer is required to furnish a return under this Act in respect of the return period that is or includes the month of June in that financial year, an amount equal to the difference.

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

### **11C Adjustment of pay-roll tax when employer ceases to be an employer during a financial year**

(1) In this section—

**“prescribed period”**, in relation to an employer who pays or is liable to pay wages, otherwise than as a member of a group, for part only of a financial year, means that part of that financial year.

**“total amount of pay-roll tax”**, in relation to an employer, means the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 7 to the difference between—

- (a) the total of the taxable wages paid or payable by the employer during a prescribed period; and
- (b) the prescribed amount (if any).

**“wages”** does not include foreign wages.

(2) Where in a financial year an employer ceases to pay wages or becomes a member of a group the employer shall, where the amount of pay-roll tax paid or payable by the employer when the employer made returns relating to the prescribed period is less than the total amount of pay-roll tax in relation to that employer for that prescribed period, pay to the commissioner as pay-roll tax, within the period during which the employer is required to furnish a return under this Act relating to that

prescribed period or the last return under this Act relating to that prescribed period, an amount equal to the difference.

(3) Where an employer, who has ceased to pay wages or has become a member of a group, as referred to in subsection (2), in any financial year, subsequently pays or is liable to pay taxable wages or interstate wages during that financial year otherwise than as a member of a group, section 11B applies to and in respect of the employer as if the reference in section 11B(2) to the amount of pay-roll tax paid or payable by that employer included a reference to any pay-roll tax paid or payable by that employer under subsection (2).

### **11D Arrangements for avoidance of tax may be disregarded**

(1) Where any person enters into any agreement, transaction, or arrangement, whether in writing or otherwise, whereby a natural person performs or renders, for or on behalf of another person, services in respect of which any payment is made to some other person related or connected to the natural person performing or rendering the services and the effect of such agreement, transaction or arrangement is to reduce or avoid the liability of any person to the assessment, imposition or payment of pay-roll tax, the commissioner may—

- (a) disregard such agreement, transaction, or arrangement; and
- (b) determine that any party to such agreement, transaction or arrangement shall be deemed to be an employer for the purposes of this Act; and
- (c) determine that any payment made in respect of such agreement, transaction or arrangement shall be deemed to be wages for the purposes of this Act.

(2) Where the commissioner makes a determination under subsection (1), the commissioner shall serve a notice to that effect on the person deemed to be an employer for the purposes of this Act and shall set out in the notice the facts on which the commissioner relies and the commissioner's reasons for making the determination.

### **11E Avoidance arrangements involving employment agents**

(1) This section applies if—

- (a) an avoidance arrangement exists in relation to an employment agency in a return period; and

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- (b) the assumed non-adjusted tax for the period is less than the assumed adjusted tax for the period.

(2) If this section applies in a return period, for the period—

- (a) if the avoidance arrangement involves an employment agent acting as trustee for a client of the employment agent under a trust or acting as agent for a client of the employment agent under an agency agreement—section 42(1)(a), (b) and (f) does not apply to the trustee or agent, or in relation to the trust or agency agreement; and
- (b) if the avoidance arrangement involves a client of an employment agent acquiring, or clients of an employment agent jointly acquiring, a controlling interest in the business of the employment agent referable to the client or clients—the client or clients is or are taken not to have the controlling interest; and
- (c) the employment agent, or each employment agent, involved in the employment agency is answerable as an employer for doing everything required to be done under this Act for the payment of wages by the employment agent that are subject to pay-roll tax under this Act (including the giving of returns and payment of pay-roll tax); and
- (d) if the employment agency involves more than 1 employment agent—the employment agents constitute a group.

(3) For this section, a client has, or clients have, a controlling interest in a business if the client has, or the clients have, a controlling interest in the business under section 16D.<sup>4</sup>

(4) In subsection (1)—

- (a) a reference to the assumed non-adjusted tax for a return period is a reference to the total amount of pay-roll tax that would be payable by the employment agent or agents involved in the employment agency for the period if the amount were calculated without applying any resultant provision; and
- (b) a reference to the assumed adjusted tax for a return period is a reference to the total amount of pay-roll tax that would be payable by the employment agent or agents involved in the

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employment agency for the period if the amount were calculated applying each relevant resultant provision.

(5) To remove any doubt about the application of subsection (4)(b), it is declared that if an employment agency is involved in more than 1 avoidance arrangement in a return period, subsection (4)(b) is to be applied by first applying each relevant resultant provision to each avoidance arrangement and then calculating the total amount for the subsection.

(6) In this section—

**“avoidance arrangement”** means an arrangement involving an employment agency if the arrangement involves 1 or more of the following—

- (a) an employment agent acting as trustee for a client of the employment agent under a trust;
- (b) an employment agent acting as agent for a client of the employment agent under an agency agreement;
- (c) a client of an employment agent acquiring, or clients of an employment agent jointly acquiring, a controlling interest in the business of the employment agent referable to the client or clients.

**“client”** includes an individual or company that—

- (a) under the *Duties Act 2001*, section 164, is a related person of the client; or
- (b) is related to the client in another way prescribed under a regulation.

**“employment agency”** means a business enterprise involving—

- (a) the business of an employment agent; or
- (b) the businesses of 2 or more employment agents.

**“resultant provision”** means subsection (2), paragraph (a), (b), (c) or (d).

## **PART 4—REGISTRATION AND RETURNS**

### **12 Registration**

(1) An employer (other than an employer who is already registered as an employer under this Act) who, during a month, pays or is liable to pay taxable wages and—

- (a) pays or is liable to pay anywhere wages of more than—
  - (i) if the month is a month after June 1997 and before January 1998—\$15 385 per week; or
  - (ii) if the month is January 1998, or a later month—\$16 346 per week; or
- (b) is a member of a group;

must, within 7 days after the end of the month, apply to the commissioner, in accordance with the regulations, for registration as an employer.

(1A) If an employer applies under subsection (1) for registration as an employer, the commissioner must register the employer.

(2) The commissioner may cancel the registration of a person as an employer if—

- (a) that person, not being a member of a group, has ceased to be an employer paying wages as referred to in subsection (1); or
- (b) that person—
  - (i) ceases to be a member of a group; and
  - (ii) does not pay or is not liable to pay wages as referred to in subsection (1).

(2A) If—

- (a) the commissioner cancels the registration of a person as an employer in a financial year; and
- (b) the person subsequently pays or is liable to pay taxable wages (otherwise than as a member of a group) during the financial year;

the person may apply to the commissioner, in accordance with the regulations, for registration as an employer, even though the person is not required under subsection (1) to apply for registration as an employer.

(2B) If an employer applies under subsection (2A) for registration as an employer, the commissioner must register the employer.

### **13 Returns**

(1) Every employer who is registered or required to apply for registration in accordance with the provisions of section 12 shall, within 7 days after the close of each month, furnish to the commissioner, in accordance with this Act, a return relating to that month and shall specify in that return any taxable wages that were paid or payable by the employer during that month.

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

- (a) within the time specified in subsection (1), the commissioner may, by notice in writing, vary the time within which that employer is required to furnish returns in pursuance of that subsection; or
- (b) relating to each month, the commissioner may, by notice in writing, authorise that employer to furnish returns relating to such periods as may be specified in the notice;

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

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

(6) Amounts required to be shown on returns furnished for the purposes of this Act that would, but for this subsection, be amounts of dollars and cents shall be shown as whole dollars and the cents shall be disregarded.

### **14 Exemption from furnishing returns**

(1) If the commissioner is of the opinion that no tax will be payable by an employer, or, if paid, would be refunded, the commissioner may issue a certificate to that employer exempting the employer from furnishing monthly returns in accordance with the provisions of section 13 and any employer to whom such a certificate is issued may refrain from furnishing monthly returns but shall, unless the contrary is expressed in the certificate, furnish a return relating to each financial year within 21 days after the close of that financial year.



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

(2A) The commissioner may, at any time by notice in writing, revoke any certificate issued under subsection (1).

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

## **15 Further returns**

The commissioner may, by notice in writing, call upon any employer or person to furnish to the commissioner, within the time specified in the notice, such return or such further or fuller return, as the commissioner requires, whether on the employer's or person's own behalf or as an agent or a trustee.

## **16 Power to obtain information and evidence**

(1) The commissioner may, by notice in writing, require any employer or person—

- (a) to furnish the commissioner with such information as the commissioner requires; or
- (b) to attend and give evidence before the commissioner or before any officer of the public service employed in the administration or execution of this Act and authorised by the commissioner in that behalf;

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

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

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

## **PART 4A—GROUPING PROVISIONS**

### **16A Interpretation**

In this part, “**business**” includes—

- (a) a trade or profession; and
- (b) any other activity carried on for fee, gain or reward; and
- (c) the activity, carried on by an employer, of employing 1 or more persons where that person performs or those persons perform duties for or in connection with another business.

### **16B Grouping of corporations**

For this Act, 2 corporations constitute a group if they are, because of the Corporations Act, part 1.2, section 50, taken for that law to be related to each other.

### **16C Grouping where employees used in another business**

(1) For the purposes of this Act, where—

- (a) an employee of an employer or 2 or more employees of an employer performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or
- (b) an employer has, in respect of the employment of or the performance of duties by 1 or more of the employer’s employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons;

that employer and—

- (c) each such other person; or
- (d) both or all of those other persons;

constitute a group.

(2) Where the commissioner is satisfied, having regard to the nature and degree of the duties referred to in subsection (1) and to any other matters that the commissioner considers relevant, that it would not be just and reasonable to include as a member of a group a person or persons carrying on a business, the commissioner may, by order in writing served on that person or those persons, exclude the person or persons from the group.

(3) In this section—

- (a) a reference to a business carried on by an employer includes a reference to a business carried on by an employer under a trust; and
- (b) a reference to a business carried on by a person includes a reference to a business carried on by a person under a trust; and
- (c) a reference to an employer includes a reference to an employer who is the trustee of a trust; and
- (d) a reference to a person with whom an employer has an agreement, arrangement or undertaking includes a reference to a person who is the trustee of a trust.

### **16D Grouping of commonly controlled businesses**

(1) A reference in this section to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person not being a trustee or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has or the same persons have together a controlling interest as referred to in subsection (3) in each of 2 businesses the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has or the same persons have together a controlling interest in each of 2 businesses if that person has or those persons have together a controlling interest under any of the following paragraphs in 1 of the businesses and a controlling interest under the same or another of the following paragraphs in the other business—

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- (a) a person has or persons have together a controlling interest in a business, being a business carried on by a corporation, if the directors or a majority of the directors or 1 or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors, of the corporation are or is accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;
- (b) a person has or persons have together a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together may (whether directly or indirectly) exercise, control the exercise of or substantially influence the exercise of 50% or more of the voting power attached to voting shares issued by the corporation;
- (c) a person has or persons have together a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
  - (i) owns or own together (whether or not beneficially) 50% or more of the capital of the partnership; or
  - (ii) is or are together entitled (whether or not beneficially) to 50% or more of any profits of the partnership;
- (d) a person has or persons have together a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary or those persons (whether or not as the trustees of another trust) are together the beneficiaries in respect of 50% or more of the value of the interests in the trust firstmentioned in this paragraph;
- (e) a person has a controlling interest in a business if, whether or not the person is a trustee of a trust, the person is the sole owner of the business or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) If a corporation has a controlling interest under subsection (3) in a business, it is taken for this Act to have a controlling interest in any other business in which another corporation that is, because of the Corporations Act, part 1.2, section 50, taken for that law to be related to it has a controlling interest.

**(5)** Where—

- (a) a person has or persons have together a controlling interest under subsection (3) in a business; and
- (b) the person or persons who carries or carry on that business has or have such a controlling interest in another business;

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest in the business referred to in paragraph (b).

**(6)** Where—

- (a) a person is a beneficiary under a trust; or
- (b) 2 or more persons together are beneficiaries under a trust;

in respect of 50% or more of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subsection (3), be deemed to have a controlling interest in that business.

**(7)** Where the commissioner is satisfied, having regard to the nature and degree of ownership or control of businesses that constitute a group and to any other matters that the commissioner considers relevant, that—

- (a) a business carried on by a member of that group is carried on substantially independently of and is not substantially connected with the carrying on of a business carried on by any other member of that group; and
- (b) it is just and reasonable that the firstmentioned member be excluded from that group;

the commissioner may, by order in writing served on the firstmentioned member, exclude that member from that group.

**(8)** In subsection (3)(a) and (b), a reference to a business carried on by a corporation includes a reference to a business carried on by a corporation under a trust.

**(9)** In subsection (4), a reference to a corporation includes a reference to a corporation that is the trustee of a trust.

**16DA Grouping of head and branch businesses**

- (1)** For the purposes of this Act, 2 businesses constitute a group if—

- (a) 1 of the businesses is a branch, agency or subsidiary of a head or parent business; and
- (b) the head or parent business exercises managerial control, whether administrative, financial or procedural over the branch, agency or subsidiary.

(2) Where the commissioner is satisfied, having regard to the nature and degree of managerial control exercised by the head or parent business and to any other matters that the commissioner considers relevant, that it would not be just and reasonable to include as a member of a group a person or persons carrying on a business, the commissioner may, by order in writing served on that person or those persons, exclude the person or persons from the group.

(3) In this section, a reference to a business includes a reference to a business carried on under a trust.

### **16E Smaller groups subsumed into larger groups**

(1) Notwithstanding any other provision of this part (except subsection (2)), where a person is whether or not by virtue of this subsection a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group, ceases to be a group if its members are members of a group constituted under subsection (1).

(3) Where the commissioner is satisfied, having regard to any matters that the commissioner considers relevant, that it would not be just and reasonable to include as members of one group the members of 2 or more groups, the commissioner may, by order in writing served on the person or persons who are members of those groups, exclude them from that one group.

(4) In this section, a reference to a person who is a member of 2 or more groups includes a reference to a person who, as a trustee of a trust, is a member of 2 or more groups.

### **16F Grouping provisions to operate independently**

The fact that a person is not a member of a group constituted under a provision of this part does not prevent that person from being a member of a group constituted under another provision of this part.

### **16G Beneficiaries under discretionary trusts**

A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and other person, may benefit under that trust shall be deemed, for the purposes of this part, to be a beneficiary in respect of 50% or more of the value of the interests in that trust.

### **16H Exclusion of persons from group**

(1) The commissioner must not under section 16C, 16D, 16DA or 16E make an order that excludes a person from a group on and from a day if the person is or was on that day a related corporation to another corporation that is a member of the group.

(2) A person who is excluded from a group by order of the commissioner under section 16C, 16D, 16DA or 16E shall inform the commissioner in writing immediately if the circumstances which were prevailing at the time of the exclusion order, as made known to the commissioner prior to the making of the order, change in a material respect.

(3) The commissioner may at any time, by order in writing served on the person or persons excluded from a group, revoke an order made under section 16C, 16D, 16DA or 16E.

(4) Notwithstanding any other provision of this part, an order under section 16C(2), 16D(7), 16DA(2) or 16E(3) shall have effect according to its tenor on and from the date specified in the order (being a date that is the date of the order or before the date of the order) as the date on and from which the person referred to in the order is or shall be deemed to have been excluded from the group so referred to.

(5) In this section—

**“related corporation”**, of a corporation, means a corporation that, under the former Corporations Law or the Corporations Act, is a related body corporate of the other corporation.

**16I Designated group employer**

(1) The members of a group may, by an instrument in writing in the approved form executed by or on behalf of each member of the group and served on the commissioner, designate 1 of its members to be the designated group employer in respect of the group for the purposes of this Act and nominate an amount, calculated in the prescribed manner not exceeding the prescribed amount as defined in section 9(1), as the deduction to be made for any return period in relation to which that designated group employer is required to furnish returns under this Act.

(1A) If the members of a group do not in accordance with subsection (1) designate 1 of the members of the group to be the designated group employer in respect of the group for the purposes of this Act, the commissioner may exercise in respect of the group the powers of designation and nomination conferred on members of the group by that subsection and for the purposes of this Act such a designation and nomination by the commissioner shall be by instrument in writing served on the member of the group designated as the designated group employer and shall have the same effect and give rise to the same consequences as if validly made by the members of the group.

(2) Subject to subsection (2A), the designated group employer in respect of a group ceases to be the designated group employer in respect of that group on and from the first day of the return period relating to the designated group employer during which—

- (a) the composition of the group alters; or
- (b) the members of the group, by an instrument in writing in the approved form executed by or on behalf of each of them who is known to the commissioner to be a member of the group and served on the commissioner, revoke the designation;

whichever occurs the earlier.

(2A) The members of a group may exercise the power of revoking a designation conferred by subsection (2) only with the prior written consent of the commissioner or, if at the same time as revoking the designation, the members make a further designation of 1 of their members to be the designated group member in substitution for the member whose designation is revoked.

(2B) Where the commissioner has exercised the powers conferred on the commissioner by subsection (1A), the commissioner may, by instrument in writing served on the member of the group designated as the designated



group employer, revoke the commissioner's designation of that member as the designated group employer and thereafter may further exercise the powers conferred on the commissioner by that subsection.

(3) For the purpose of ascertaining the pay-roll tax payable by a designated group employer, there shall, subject to subsection (4), be deducted for a return period (being the return period commencing last before the day on which the instrument under subsection (1) or (1A) designating the person as the designated group employer in respect of the group is served on the commissioner or by the commissioner, as the case may be, or any subsequent return period) from the amount of the taxable wages included in a return made by or an assessment relating to that employer (being a return or an assessment relating to any such return period) the amount nominated in that instrument.

(4) The commissioner may, on an application made to the commissioner in writing executed by or on behalf of each person known to the commissioner to be a member of a group or of the commissioner's own motion in relation to a group, at any time, make a determination specifying an amount not exceeding the prescribed amount as defined in section 9(1) that may be deducted for any return period specified or referred to in the determination (being a return period commencing before or after, or the return period in which, the determination is made) from the taxable wages included in a return made by or an assessment relating to an employer specified in the determination who was during any such return period a member of that group and there shall be deducted for any such return period from the amount of the taxable wages included in a return made by or an assessment relating to that employer (being a return or an assessment relating to any such return period) the amount so specified.

(5) The commissioner may, at any time by instrument in writing, revoke a determination made under subsection (4) and any such revocation shall have effect on and from the first day of the return period specified in the instrument, whether that return period is before, but not before the date of the determination, or after, or the return period in which, the instrument is executed by the commissioner.

(6) An employer specified in a determination made under subsection (4) shall, on the first day of the first return period specified or referred to in the determination, be deemed to have been designated under subsection (1) or (1A) to be the designated group employer in respect of the group of which the employer was then a member and shall, subject to subsection (2) or (2A), thereafter be the designated group employer in respect of that group.

(7) The commissioner shall, as soon as practicable after making a determination under subsection (4), serve notice of the determination on the designated group employer in respect of the group concerned.

## 16J Interpretation

(1) Subject to this Act, in sections 16K(2)(b) and 16L(3)(b), a reference to the prescribed amount is, for a designated group employer, a reference to the greater of zero and the amount calculated—

(a) for the financial year starting on 1 July 1997—using the formula—

$$P = \frac{TW}{TW + IW} \left[ \frac{JA + KB}{365} - \frac{1}{3} \left( TW + IW - \frac{JA + KB}{365} \right) \right]; \text{ and}$$

(b) for the financial years starting on 1 July 1998 and afterwards—using the formula—

$$P = \frac{TW}{TW + IW} \left[ \frac{KC}{365} - \frac{1}{3} \left( TW + IW - \frac{KC}{365} \right) \right].$$

(1A) In the formulas in subsection (1)—

“A” means—

- (a) if paragraph (b) does not apply—the number of days in the part of the financial year starting on 1 July and ending on 31 December (whether or not wholly or partly concurrent) for which 1 or more members of the group pay, or are liable to pay, taxable wages or interstate wages or taxable wages and interstate wages; or
- (b) if 1 or more members of the group pay, or are liable to pay, taxable wages or interstate wages or taxable wages and interstate wages for the whole of the part—182.5.

“B” means—

- (a) if paragraph (b) does not apply—the number of days in the part of the financial year starting on 1 January and ending on 30 June (whether or not wholly or partly concurrent) for which 1 or more members of the group pay, or are liable to pay, taxable wages or interstate wages or taxable wages and interstate wages; or

- (b) if 1 or more members of the group pay, or are liable to pay, taxable wages or interstate wages or taxable wages and interstate wages for the whole of the part—182.5.

“C” means the sum of A+B.

“IW” means the amount of interstate wages paid or payable by members of the group in the financial year.

“J” means 800 000.

“K” means 850 000.

“P” means the prescribed amount in dollars.

“TW” means the amount of taxable wages paid or payable by members of the group in the financial year.

(2) Where during a financial year there were 2 or more designated group employers in respect of a group, the prescribed amount shall be calculated as if there had been only 1 designated group employer in respect of the group during that financial year.

### **16K Annual adjustment**

(1) This section applies in relation to a group at least 1 member of which paid or was liable to pay as such a member taxable wages or interstate wages for the whole of a financial year.

(2) A reference in this section to the annual amount of pay-roll tax paid or payable by the members of a group is a reference to the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 7 to the amount by which—

- (a) the total of the taxable wages paid or payable by the members of that group during a financial year;

exceeds—

- (b) where—

- (i) during that financial year there was only 1 designated group employer in respect of that group—the prescribed amount applicable to that designated group employer; or
- (ii) during that financial year there were 2 or more designated group employers in respect of that group—the prescribed amount that, if there had been only 1 designated group employer in respect of that group during that financial year,

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would have been applicable to that designated group employer had the designated group employer paid all of the taxable wages referred to in paragraph (a) paid or payable during that financial year.

(3) A reference in this section to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is a reference to the amount of pay-roll tax paid or payable when returns were made or required to be made under this Act relating to that financial year, being returns in which the taxable wages referred to in subsection (2)(a) were included or required to be included.

(4) Where the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is greater than the annual amount of pay-roll tax in relation to those members for that financial year, the commissioner shall, on an application made in accordance with subsection (7) by the person who is the designated group employer in respect of that group on 30 June in that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the total of any amounts refunded to any member of that group under section 19 in respect of the tax paid or payable by any such member when returns relating to that financial year were made or required to be made under this Act by that member.

(5) Where the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is less than the annual amount of pay-roll tax in relation to those members for that financial year, the person who is the designated group employer in respect of that group on 30 June in that financial year shall pay to the commissioner as pay-roll tax, within the period during which the designated group employer is required to furnish a return under this Act in respect of the return period that is or includes the month of June in that financial year, an amount equal to the difference.

(6) If a designated group employer in respect of a group fails to pay any amount that the designated group employer is required to pay under subsection (5) in respect of a financial year, every member of the group who paid or was liable to pay taxable wages during that financial year is liable jointly and severally to pay that amount to the commissioner.

(7) An application under subsection (4) shall, notwithstanding section 19, be made within the financial year next following the financial year in respect of which the refund is applied for.

### **16L Adjustment of payment of pay-roll tax when members of a group cease to pay taxable wages or interstate wages during a financial year**

(1) This section applies in relation to a group at least 1 member of which paid or was liable to pay as such a member taxable wages or interstate wages for part only (being a continuous part) of a financial year and no member of which paid or was liable to pay as such a member any such wages during the whole of that financial year.

(2) In this section—

**“prescribed period”**, in relation to a group, means part only (being a continuous part) of a financial year for which at least 1 member of the group paid or was liable to pay taxable wages or interstate wages.

(3) A reference in this section to the total amount of pay-roll tax paid or payable for a prescribed period by the members of a group is a reference to the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 7 to the amount by which—

- (a) the total of the taxable wages paid or payable by the employers in that group during that prescribed period;

exceeds—

(b) where—

- (i) during that prescribed period there was only 1 designated group employer in respect of that group—the prescribed amount applicable to that designated group employer; or
- (ii) during that prescribed period there were 2 or more designated group employers in respect of that group—the prescribed amount that, if there had been only 1 designated group employer in respect of that group during that prescribed period, would have been applicable to that designated group employer had the designated group employer paid all of the wages referred to in paragraph (a) paid or payable during that financial year.

(4) Where at the expiration of a prescribed period relating to a group the total amount of pay-roll tax paid or payable when returns were made or required to be made under this Act, being returns in which the taxable wages referred to in subsection (3)(a) were included or required to be included, is less than the total amount of pay-roll tax paid or payable for that prescribed period by the members of that group, the person who is the

designated group employer in respect of that group on the last day of that prescribed period shall pay to the commissioner as pay-roll tax, within the period during which the designated group employer is required to furnish a return under this Act or the last return under this Act relating to that prescribed period, an amount equal to the difference.

(5) Section 16K(4) and (5) apply in relation to a group to which this section applies as if—

- (a) at least 1 member of the group paid or was liable to pay, as such a member, taxable wages or interstate wages for the whole of that financial year; and
- (b) the reference in section 16K(3) to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of that group included a reference to any pay-roll tax paid or payable under subsection (4) by a designated group employer in respect of that financial year; and
- (c) the person (if any) who was the designated group employer in respect of that group at the time when the group last ceased in that financial year to have a member who was paying or was liable to pay, as such a member, taxable wages or interstate wages was the designated group employer in respect of that group on 30 June in that financial year.

(6) If a designated group employer in respect of a group fails to pay any amount that the designated group employer is required to pay under subsection (4) in respect of a period, every member of the group who paid or was liable to pay taxable wages during the financial year that includes that period is liable jointly and severally to pay that amount to the commissioner.

## **PART 5—COLLECTION AND RECOVERY OF TAX**

### **17 Time for payment of tax**

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

**18 Assessments**

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

- (a) assess the amount of taxable wages or, where relevant, interstate wages paid or payable by the employer; and
- (b) calculate the pay-roll tax or further tax payable by the employer.

(2) Where—

- (a) any employer fails or neglects duly to furnish any return as and when required by this Act or by the commissioner; or
- (b) the commissioner is not satisfied with the return made by any employer; or
- (c) the commissioner has reason to believe or suspect that any employer (though the employer may not have furnished any return) is liable to pay pay-roll tax;

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

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

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

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

employer became liable by reason of the employer being an employer to whom section 36(1) applied and which the employer has paid in respect of the taxable wages in respect of which the pay-roll tax or further tax was assessed) or the amount of \$2, whichever is the greater, but the commissioner may, in any particular case, for reasons which the commissioner thinks sufficient, remit the additional tax or any part thereof.

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

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

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

### **18A Rounding down amounts of tax etc.**

If an amount payable under this Act is not a multiple of 5c, the commissioner may reduce the amount to the nearest amount that is a multiple of 5c.

## **19 Refunds**

Where the commissioner finds in any case that tax has been overpaid the commissioner may, upon application therefor being made by the person entitled thereto within 2 years after the date of the overpayment or such further period as the commissioner in a particular case allows, refund to that person the amount of tax found to be overpaid.

## **20 Employer leaving Australia**

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



**21 Time to pay—extensions and instalments**

The commissioner may, in such cases as the commissioner thinks fit—

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

**22 Penal tax**

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

- (a) where it is paid on or before the 14th day after that time—at the rate of 1%; or
- (b) where it is not paid on or before the 14th day but it is paid within 1 month after that time—at the rate of 5%; or
- (c) where it is not paid within 1 month but is paid within 1 year after that time—at the rate of 10%; or
- (d) where it is not paid as referred to in subparagraph (a), (b) or (c)—at the rate of 10% for each year or part of a year during which it is not paid;

of the pay-roll tax, further tax or additional tax, as the case may be or, if the amount of the penal tax ascertained at the relevant rate does not amount to \$2, in the amount of \$2.

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

**23 Recovery of tax**

(1) Tax shall be deemed when it becomes due and payable to be a debt due to Her Majesty and payable to the commissioner.

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

**24 Substituted service**

If, in any proceedings against an employer for the recovery of any tax, the defendant—

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

service of any process in the proceedings may, without leave of the court, be effected on the employer by posting it by prepaid post addressed to the employer at his or her last known place of business or abode in Australia.

**25 Liquidator to give notice**

(1) Every person who is liquidator of any company which is being wound up and which is an employer registered or required to be registered under this Act, shall, within 14 days after the person has become liquidator of that company, serve on the commissioner notice in writing of his or her appointment as liquidator.

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

(3) The liquidator—

- (a) shall not without leave of the commissioner part with any of the assets of the company until the liquidator has been so notified; and
- (b) shall set aside out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
- (c) shall, to the extent of the value of the assets which the liquidator is so required to set aside, be liable as trustee to pay the tax.

(4) If the liquidator fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which the liquidator is liable under subsection (3)), the liquidator shall, to the extent of the value of the assets of which the liquidator has taken possession and which are, or were at any

time, available to the liquidator for the payment of the tax, be personally liable to pay the tax, and shall be guilty of an offence.

Maximum penalty—20 penalty units.

(5) Where more persons than 1 are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of those persons and, where any 1 of those persons has paid the tax due in respect of the company being wound up, the other person or persons shall each be liable to pay that person his or her equal share of the amount of the tax so paid.

(6) Notwithstanding anything contained in this section, provision, which in the opinion of the commissioner is proper, may be made for the costs and expenses referred to in the Corporations Act, section 556(1)(a)<sup>5</sup> and debts of a class referred to in any other paragraph of that section may be paid out of the assets of the company in priority to any tax payable in respect of the company.

(7) Nothing in this section limits the liability of a liquidator under section 42 or the liquidator's liability as a trustee under part 4A.

## **26 Agent for absentee principal winding-up business**

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

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

Maximum penalty for subsection (2)—20 penalty units.

## **27 Where tax not paid during lifetime**

(1) The following provisions of this section apply where, whether intentionally or not, a person escapes full payment of tax in the person's

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<sup>5</sup> Corporations Act, section 556 (Priority payments)

lifetime by reason of the person not having duly made any, or full, complete and accurate returns.

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

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

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

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

## **28 Provision for payment of tax by executors or administrators**

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

(2) The executors or administrators shall furnish such of the returns mentioned in part 4 as have not been made by the deceased.

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

(4) Where, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within 6 months of the employer's death, the commissioner may cause an assessment to be made of the amount of tax due by the deceased.

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

(6) Any person claiming an interest in the estate of the deceased may, within 42 days after the first publication of notice of the assessment, post to or lodge with the commissioner an objection in writing against the assessment stating fully and in detail the grounds on which the person relies.

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

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

(9) Notwithstanding anything contained in subsections (7) and (8), if at any time probate of the will of the deceased is, or letters of administration of the estate are, granted to a person, that person may, within 42 days after the date on which probate was, or letters of administration were, granted, lodge with the commissioner an objection against the assessment, stating fully and in detail the grounds on which the person relies.

## **29 Recovery of tax paid on behalf of another person**

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

## **30 Contributions from joint taxpayers**

Where 2 or more persons are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax may recover contributions as follows—

- (a) a person who has paid the tax in respect of any wages may recover by way of contribution from any other person jointly liable to that tax a sum which bears to the tax the same proportion as the share of the taxable wages which that other person paid or was liable to pay bears to the total amount of taxable wages which the persons jointly liable to tax paid or were liable to pay;

- (b) every person entitled to contribution under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at the person's request, or may retain or deduct the amount of the contribution out of any moneys in the person's hands belonging or payable to the person liable to contribute.

### **31 Commissioner may collect tax from person owing money to employer**

(1) The commissioner may, by notice in writing (a copy of which shall be served on the employer at the employer's last known place of abode or business), require—

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

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

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

Maximum penalty—20 penalty units.

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

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

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

(6) In this section—

“**tax**” includes any judgment debt and costs in respect of any tax.

## **PART 6—OBJECTIONS AND APPEALS**

### **32 Objections**

(1) A person who is dissatisfied with any decision, determination or assessment made by the commissioner under this Act, by which the person’s liability to pay tax is affected, may, within 60 days after service of notice of the decision, determination or assessment, as the case may be, post to, or lodge with, the commissioner an objection in writing stating fully and in detail the grounds on which the person relies.

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

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

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

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

(6) The commissioner shall serve on the objector written notice of the commissioner’s decision on the objection.

### **33 Appeal**

(1) A person who is dissatisfied with a decision of the commissioner on an objection made by that person may, within 30 days after service on the person of notice of that decision or within such further time as the commissioner may allow, by a request in writing accompanied by a fee of \$5 request the commissioner to treat the person's objection as an appeal and to forward it to the Supreme Court, and the commissioner shall, as soon as practicable, forward it accordingly.

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

(3) On appeal—

- (a) the objector shall be limited to the grounds stated in the objector's objection; and
- (b) the burden of proving that any assessment objected to is excessive lies on the objector.

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

### **34 Pending appeal not to delay payment of tax**

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

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

## **PART 7—PENAL PROVISIONS**

### **35 Offences**

(1) Any person who—



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

shall be guilty of an offence.

Maximum penalty—20 penalty units.

**(2)** Where a person commits an offence referred to in subsection (1)(a) or (1)(d) that consists of neglecting or failing to do anything at a particular time or within a particular period—

- (a) the offence shall be deemed to continue for as long as the thing remains undone, notwithstanding that the time or, as the case may be, the period has elapsed; and
- (b) upon convicting the person of the offence, the court may, in addition to any penalty that it may impose under subsection (1), order the person to pay a fine not exceeding 2 penalty units for each day on which the offence is, pursuant to paragraph (a), deemed to have continued.

**(3)** Where a person has been convicted of an offence against subsection (1), the court may—

- (a) in addition to imposing a penalty on the person as provided in that subsection and, where applicable, subsection (2); and
- (b) in a case of an offence referred to in subsection (2), notwithstanding that the relevant time or period has expired;

order the person to comply with the provision of this Act or, as the case may be, the requirement made under this Act in respect of which the offence was committed.

**(3A)** Where a court makes an order pursuant to subsection (3), it may specify the time within which or the place and time at which the order shall be complied with.

**(4)** A person must comply with an order made by a court under subsection (3).

Maximum penalty—40 penalty units or 6 months imprisonment.

**(5)** The court may—

- (a) in addition to any other punishment imposed by it in respect of an offence against subsection (4);
- (b) if satisfied that the person committed the offence with the intention of avoiding pay-roll tax chargeable under this Act;

order the person to pay treble the amount of pay-roll tax that the person intended to avoid.

### **36 Additional tax in certain cases**

**(1)** Notwithstanding anything contained in section 35, an employer who—

- (a) fails or neglects, otherwise than as referred to in paragraph (b), to furnish any return or information as and when required by this Act or by the commissioner, is liable to pay additional tax at the rate of 10% pa upon the amount of pay-roll tax payable by the employer (that percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which an assessment is made under section 18, whichever first occurs), or in the amount of \$10, whichever is the greater;
- (b) furnishes a return to the commissioner, but fails or neglects to include in that return any particulars of taxable wages required by this Act to be included in that return, is liable to pay by way of additional tax double the amount of the difference between the pay-roll tax properly payable and the pay-roll tax payable upon the basis of the return furnished, or the amount of \$10, whichever is the greater.

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

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

### **37 Avoiding taxation**

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

Maximum penalty—20 penalty units and treble the amount of pay-roll tax avoided or attempted to be avoided.

### **38 Time for commencing prosecutions**

(1) A prosecution in respect of any offence against section 37 may be commenced at any time within 3 years after the commission of the offence.

(2) A prosecution in respect of any offence arising under section 35(1)(a), (1)(c) or (4) may be commenced at any time.

### **39 Penalties not to relieve from tax**

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

### **40 Obstructing officers**

Any person who obstructs or hinders any officer of the public service acting in the administration or execution of this Act shall be guilty of an offence.

Maximum penalty—20 penalty units.

## PART 8—MISCELLANEOUS

### 41 Public officer of company

(1) The commissioner may, by notice served on a company, require the company to appoint, within such period as is specified in the notice, a public officer (being a natural person whose principal place of residence is in Queensland) of the company for the purposes of this Act, and to keep the office of public officer constantly filled by such a person.

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

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

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

(5) Everything done by the public officer that the public officer is required to do in the public officer's representative capacity shall be deemed to have been done by the company and the absence or non-appointment of a public officer does not excuse the company from the necessity of complying, or from any penalty for failure to comply, with any of the provisions of this Act, but the company is liable to comply with the provisions of this Act as if there were no requirement to appoint a public officer.

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

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

(8) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding that, under this Act, may be given to, served on or taken against the company or its public officer may, if the commissioner thinks fit, be given to, served on or taken against

any director, secretary or other officer of the company or any attorney or agent of the company, and that director, secretary, officer, attorney or agent has the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.

## **42 Agents and trustees**

(1) With respect to every agent and with respect also to every trustee, the following provisions shall apply—

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

- (g) the agent or trustee is hereby indemnified for all payments which the agent or trustee makes in pursuance of this Act or by the requirements of the commissioner;
- (h) for the purpose of ensuring the payment of tax the commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as the commissioner would have against the property of any other person in respect of tax, and in as full and ample a manner.

(2) Subsection (1) does not exclude, limit or otherwise affect the operation of part 4A to the extent the part applies to—

- (a) an agent or trustee; or
- (b) 2 or more persons, 1 or more of whom is an agent or trustee.

#### **43 Person in receipt or control of money for absentee**

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

- (a) the person shall when required by the commissioner pay the tax due and payable by the person on whose behalf the person has the receipt, control or disposal of money;
- (b) where the person pays tax in accordance with paragraph (a) the person is hereby authorised to recover the amount so paid from the person on whose behalf the person paid it or to deduct it from any money in the person's hands belonging to that person;
- (c) when the person is so required by the commissioner, the person is hereby authorised and required to retain from time to time out of any money which comes to the person on behalf of the person resident out of Australia so much as is sufficient to pay the tax which is or will become due by that person;
- (d) the person is hereby made personally liable for the tax payable by the person on behalf of the person resident out of Australia if, after the commissioner has required the person to pay the tax, the person, except with the written permission of the commissioner, disposes of or parts with any fund or money then in the person's possession, or which comes to the person from or out of which

the tax could legally be paid, but the person shall not be otherwise personally liable for the tax;

- (e) the person is hereby indemnified for all payments which the person makes in pursuance of this Act or in accordance with the requirements of the commissioner.

#### **44 Books, accounts etc. to be preserved**

(1) Every person who is an employer registered or required to be registered under this Act shall, for the purposes of this Act, keep proper books or accounts and shall preserve those books or accounts, for a period of not less than 5 years after the completion of the transactions to which they relate.

Maximum penalty—20 penalty units.

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

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

#### **45 Access to books etc.**

The commissioner, or any officer of the public service authorised by the commissioner in that behalf, shall at all reasonable times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act and for any such purpose may make extracts from or copies of any such books, documents or papers.

#### **46 Evidence**

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

- (a) the employer named in the certificate was liable to tax in respect of the period specified in the certificate; or

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- (aa) the employer named in the certificate is registered or, as the case may be, deemed to be registered as an employer under this Act; or
- (b) an assessment of tax was duly made against the employer; or
- (c) the particulars of the assessment are as stated in the certificate; or
- (d) notice of the assessment was duly served upon the employer; or
- (e) the amount specified in the certificate was at the date of the certificate payable as tax by the employer named in the certificate;

shall be prima facie evidence of the matters so certified.

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

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

(4) In any proceedings against a person for failing or neglecting duly to furnish a return, a certificate in writing purporting to be signed by the commissioner certifying that the return has not been received from that person by any officer of the public service authorised by the commissioner to receive returns shall be prima facie evidence that the defendant has failed or neglected duly to furnish the return.

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



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

shall be prima facie evidence of the matters so certified.

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

(7) A notification in the gazette that any person has been appointed as commissioner, shall be conclusive evidence of the appointment.

#### **46A Affidavit evidence in proceedings for recovery of tax**

(1) Evidence in a proceeding against a person for the recovery of tax may be given by affidavit.

(2) However, a person who gives evidence by affidavit may be cross-examined about the evidence in the affidavit.

#### **46B Signature of commissioner**

(1) A document is taken to have been signed by the commissioner if the document bears the written, printed or stamped name of the commissioner instead of the commissioner's signature.

(2) Subsection (1) does not apply if the name of the commissioner was written, printed or stamped on the document without the commissioner's authority.

(3) A document bearing the written, printed or stamped name of the commissioner is presumed to have been made with the commissioner's authority unless the contrary is proved.

#### **46C Commissioner's certificate**

(1) The commissioner may certify—

- (a) a copy of a document in the commissioner's possession to be a true copy of the document; and

(b) an extract from a document in the commissioner's possession to be a true extract from the document.

(2) A copy of, or extract from, a document certified under subsection (1) is evidence of the document, or the relevant part of the document.

#### **47 Service of documents by the commissioner**

(1) Any certificate, notice, form or other document required or authorised by this Act to be served or given by the commissioner shall be deemed to have been duly served or given—

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

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

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

(3) This section is in addition to, and does not limit—

(a) other provisions of this Act about the service of documents; or

(b) the Corporations Act, section 109X or 601CX.<sup>6</sup>

#### **48 Service of documents on the commissioner**

Any notice, summons, writ or other process and any return, application, notice, statement or form to be served on the commissioner for the purposes of this Act may be served by being lodged at the office of the

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<sup>6</sup> Corporations Act, sections 109X (Service of documents) and 601CX (Service of documents on registered body)

commissioner with an officer of the public service employed in the administration or execution of this Act and authorised in writing by the commissioner to accept service of documents on the commissioner's behalf.

#### **49 Institution of prosecutions**

(1) Proceedings for an offence against any provision of this Act may be instituted in the name of the commissioner by any officer of the public service employed in the administration or execution of this Act and authorised to institute proceedings on behalf of the commissioner, and any proceedings instituted in the name of the commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by the commissioner's authority.

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

#### **50 Proceedings on prosecutions**

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

#### **50A Approval of forms**

The commissioner may approve forms for use under this Act.

#### **51 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Regulations may be made with respect to—

- (b) the way of making an application to the commissioner under this Act; and
- (c) the evidence the commissioner may require to decide whether or not—
  - (i) an employer was an employer for part only of a financial year; or
  - (ii) a person was a member of a group; or

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- (iii) a notice under section 13(2) or a certificate under section 14(1) should be given; and
  - (d) the giving and signing of a return, application, notice, statement or form by or on behalf of an employer or other person; and
  - (e) providing that a return, application, notice, statement or form signed on behalf of an employer is taken to have been signed by the employer; and
  - (f) in relation to fringe benefits, what is to be included in a return as the value of fringe benefits paid or payable by an employer; and
  - (g) any other matter for the application of this Act to a fringe benefit; and
  - (h) the payment of tax; and
  - (i) the way of notifying the appointment of a public officer of a company.
- (3)** A regulation may impose a penalty of not more than 20 penalty units for a contravention of the regulation.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 March 2002. Future amendments of the Pay-roll Tax Act 1971 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 57 of 1995	18 January 1996
2	to Act No. 70 of 1996	21 January 1997
2A	to Act No. 43 of 1997	25 November 1997
2B	to Act No. 13 of 1999	13 July 1999
2C	to Act No. 78 of 1999	21 December 1999
2D	to Act No. 20 of 2000	5 July 2000
2E	to Act No. 48 of 2000	20 November 2000
3	to Act No. 45 of 2001	31 July 2001

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	1
Corrected minor errors	2
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Pay-roll Tax Act 1971 No. 37**

date of assent 30 September 1971

commenced 1 September 1971 (see s 1(2)–(3))

amending legislation—

### **Pay-roll Tax Act Amendment Act 1973 No. 45**

date of assent 28 September 1973

commenced 1 September 1973 (see s 2)

### **Pay-roll Tax Act Amendment At 1974 No. 59**

date of assent 27 September 1974

commenced 1 September 1974 (see s 2)

### **Pay-roll Tax Act Amendment Act 1975 No. 80**

date of assent 16 December 1975

commenced 1 January 1976 (see s 2)

**Pay-roll Tax Act Amendment Act 1976 No. 77**

date of assent 14 December 1976  
commenced on date of assent

**Pay-roll Tax Act Amendment Act 1977 No. 59**

date of assent 7 October 1977  
commenced on date of assent

**Pay-roll Tax Act Amendment Act 1979 No. 54**

date of assent 19 November 1979  
commenced 1 January 1980 (see s 2)

**Pay-roll Tax Act Amendment Act 1980 No. 28**

date of assent 12 May 1980  
commenced on date of assent

**Pay-roll Tax Act Amendment Act 1980 (No. 2) No. 54**

date of assent 22 September 1980  
commenced 1 January 1981 (see s 2)

**Companies (Consequential Amendments) Act 1981 No. 111 s 23 sch**

date of assent 16 December 1981  
ss 1–2 commenced on date of assent (see s 2(1))  
remaining provisions commenced 1 July 1982 (see s 2(4) and proc pubd gaz  
29 June 1982 p 2102)

**Pay-roll Tax Act Amendment Act 1982 No. 64**

date of assent 13 December 1982  
commenced 1 January 1983 (see s 2)

**Pay-roll Tax Act Amendment Act 1984 No. 4**

date of assent 6 January 1984  
ss 6–7, 9, 16–17 commenced 1 January 1984 (see s 2(2))  
remaining provisions commenced on date of assent (see s 2(1))

**Pay-roll Tax Act Amendment Act 1984 (No. 2) No. 107**

date of assent 12 December 1984  
ss 1–2 commenced on date of assent (see s 2(1))  
remaining provisions commenced 1 January 1985 (see s 2(2))

**Pay-roll Tax Act Amendment Act 1985 No. 100**

date of assent 13 December 1985  
s 4(a) commenced 1 October 1984 (see s 2(2))  
ss 4(b), 5, 7–8, 10 and 13 commenced 1 January 1986 (see s 2(3))  
remaining provisions commenced on date of assent (see s 2(1))

**Pay-roll Tax Act Amendment Act 1986 No. 50**

date of assent 25 September 1986  
ss 1–2 commenced on date of assent (see s 2(1))  
remaining provisions commenced 1 January 1987 (see s 2(2))

**Pay-roll Tax Act Amendment Act 1988 No. 99**

date of assent 8 December 1988  
ss 1–2 commenced on date of assent (see s 2(1))  
remaining provisions commenced 1 January 1989 (see s 2(2))

**Pay-roll Tax Act Amendment Act 1990 No. 22**

date of assent 13 June 1990

s 6 commenced 1 November 1989 (see s 3(2))

ss 5, 7–9 commenced 1 January 1990 (see s 3(3))

remaining provisions commenced on date of assent (see s 3(1))

**Corporations (Consequential Amendments) Act 1990 No. 99 ss 1.1–1.2, 3.1 sch**

date of assent 12 December 1990

ss 1.1–1.2 commenced on date of assent (see s 1.2(1))

remaining provisions commenced 1 January 1991 (proc pubd gaz  
22 December 1990 p 2270)

**Pay-roll Tax Amendment Act 1991 No. 74**

date of assent 21 November 1991

ss 4–7 commenced 1 January 1992 (see s 2)

remaining provisions commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 1**

date of assent 2 July 1992

commenced on date of assent

**Pay-roll Tax Amendment Act 1992 No. 54**

date of assent 30 November 1992

ss 4–7 commenced 1 January 1993 (see s 2)

remaining provisions commenced on date of assent

**Revenue Laws Amendment Act 1993 No. 51 pts 1, 4**

date of assent 25 October 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1994 (see s 2(3))

**Revenue Laws Amendment Act 1995 No. 28 pts 1, 3**

date of assent 14 June 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 2(1))

**Revenue Laws Amendment Act (No. 2) 1995 No. 44 pts 1, 3**

date of assent 22 November 1995

s 11 commenced 1 July 1995 (see s 2(2))

remaining provisions commenced on date of assent

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1 (as amd by Act 1995 No. 58  
ss 1–2, 4 sch 1)**

date of assent 28 November 1995

commenced on date of assent

**Revenue Laws Amendment Act 1996 No. 48 pts 1, 3**

date of assent 15 November 1996

commenced on date of assent

**Revenue Laws Amendment Act (No. 2) 1996 No. 70 pts 1, 4**

date of assent 9 December 1996

commenced on date of assent



**Revenue Laws Amendment Act 1997 No. 43 s 1 pt 3**

date of assent 25 August 1997  
commenced on date of assent

**Revenue and Other Legislation Amendment Act 1999 No. 13 ss 1, 2(7) pt 5**

date of assent 30 March 1999  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 1999 (1999 SL No. 82)

**Revenue and Other Legislation Amendment Act (No. 2) 1999 No. 49 ss 1, 2(3) pt 4 s 38 sch**

date of assent 4 November 1999  
commenced on date of assent

**Revenue Laws Amendment Act 1999 No. 78 s 1 pt 3**

date of assent 14 December 1999  
commenced on date of assent

**GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3**

date of assent 23 June 2000  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2000 (see s 2(4))

**Revenue Laws Amendment Act 2000 No. 48 pts 1, 3**

date of assent 17 November 2000  
s 6(1) commenced 1 July 2000 (see s 2(1))  
s 6(2) commenced 8 September 2000 (see s 2(2))  
remaining provisions commenced on date of assent

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001  
sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)  
remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285))

**Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1**

date of assent 13 November 2001  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 March 2002 (2002 SL No. 10)

**Taxation Administration Act 2001 No. 72 ss 1–2, 164 sch 1**

date of assent 13 November 2001  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 March 2002 (2002 SL No. 12)

## 7 List of annotations

### Short title

**prov hdg** amd 1995 No. 57 s 4 sch 1

**s 1** amd 1995 No. 57 s 4 sch 1

### Parts of Act

**s 2** amd 1975 No. 80 s 3; 1984 No. 4 s 4  
om R1 (see RA s 36)

### Interpretation

**s 3** amd 1975 No. 80 s 4(b)–(c); 1976 No. 77 s 2; 1984 No. 4 s 5(b); 1985 No. 100 s 4(b); 1993 No. 51 s 15(4); 1995 No. 57 s 4 sch 1; R1 (see RA s 39); 1999 No. 78 s 7 (3)–(4)

def “**agent**” (for the definition “employment agent”) ins 1996 No. 70 s 20(1)

def “**approved form**” ins 1995 No. 57 s 4 sch 1

def “**client**” ins 1996 No. 70 s 20(1)

def “**corporation**” ins 1975 No. 80 s 4(a)(i)

sub 1995 No. 57 s 4 sch 1

amd 2001 No. 45 s 29 sch 3

def “**corresponding law**” sub 1999 No. 49 s 23

def “**designated group employer**” ins 1975 No. 80 s 4(a)(ii)

def “**employer**” amd 1984 No. 4 s 5(a)(i); 1996 No. 70 s 20(2)

def “**employment agent**” ins 1996 No. 70 s 20(1)

def “**financial year**” sub 1975 No. 80 s 4(a)(iii)

om R1 (see RA s 39)

def “**foreign wages**” ins 1975 No. 80 s 4(a)(iv)

def “**fringe benefit**” ins 1993 No. 51 s 15(1)

def “**Fringe Benefits Assessment Act**” ins 1993 No. 51 s 15(1)

def “**group**” ins 1975 No. 80 s 4(a)(iv)

def “**interstate wages**” ins 1975 No. 80 s 4(a)(iv)

def “**Local Authority**” amd 1985 No. 100 s 4(a)

om 1992 No. 36 s 2 sch 1

def “**Minister**” ins 1990 No. 22 s 4

om 1992 No. 36 s 2 sch 1

def “**month**” om R1 (see RA s 39)

def “**paid or payable**” ins 1993 No. 51 s 15(1)

def “**pay**” ins 1993 No. 51 s 15(1)

def “**person**” om 1992 No. 36 s 2 sch 1

def “**return period**” ins 1975 No. 80 s 4(a)(v)

def “**superannuation contribution**” ins 1999 No. 78 s 7(1)

def “**voting share**” ins 1975 No. 80 s 4(a)(vi)

sub 1995 No. 57 s 4 sch 1

amd 2001 No. 45 s 29 sch 3

def “**wages**” amd 1975 No. 80 s 4(a)(vii); 1984 No. 4 s 5(a)(ii); 1993 No. 51 s 15(2)–(3); 1996 No. 70 s 20(3); 1999 No. 78 s 7(2)

### Meaning of “superannuation contribution”

**s 3A** ins 1999 No. 78 s 8

**Other provisions about meaning of “wages”**

**s 3B** ins 1999 No. 78 s 8  
amd 2000 No. 20 s 29 sch 3

**Commissioner of Pay-roll Tax**

**s 4** amd 1995 No. 57 s 4 sch 1; 2001 No. 72 s 164 sch 1

**Delegations**

**prov hdg** sub 2001 No. 72 s 164 sch 1  
**s 4A** ins 1995 No. 57 s 4 sch 1  
amd 2001 No. 72 s 164 sch 1

**Disclosure of information**

**s 5** amd 1995 No. 57 s 4 sch 1; 2001 No. 72 s 164 sch 1

**Wages liable to pay-roll tax**

**s 6** amd 1995 No. 44 s 12  
(1A) exp 22 November 1995 (see s 6(1C))  
AIA s 20A applies (see s 6(1B))  
(1B), (1C) exp 22 November 1995 (see s 6(1C))

**Imposition of pay-roll tax on taxable wages**

**s 7** amd 1973 No. 45 s 3; 1974 No. 59 s 3; 1999 No. 78 s 9

**Value of taxable wages**

**s 8A** ins 1993 No. 51 s 16; amd 1999 No. 78 s 10

**Deduction from taxable wages**

**prov hdg** sub 1979 No. 54 s 4(b)  
**s 9** prev s 9 amd 1975 No. 80 s 5  
om 1979 No. 54 s 3  
pres s 9 (prev s 9A) ins 1975 No. 80 s 6  
amd 1976 No. 77 s 3; 1977 No. 59 s 2  
renum 1979 No. 54 s 4(a)  
amd 1979 No. 54 s 5; 1980 No. 54 s 3; 1982 No. 64 s 3; 1984 No. 4 s 6; 1984  
No. 107 s 4; 1985 No. 100 s 5; 1986 No. 50 s 4; 1988 No. 99 s 4; 1990  
No. 22 s 5; 1991 No. 74 s 4; 1992 No. 54 s 4; 1995 No. 28 s 7; 1995 No. 57  
s 4 sch 1; 1996 No. 48 s 6; 1997 No. 43 s 15; 1999 No. 49 s 38 sch

**Exemption from pay-roll tax**

**s 10** amd 1980 No. 28 s 2; 1985 No. 100 s 6; 1990 No. 22 s 6; 1995 No. 57 s 4  
sch 1; 2000 No. 48 s 6

**Exemption from pay-roll tax—certain CWA wages**

**s 11** prev s 11 amd 1975 No. 80 s 7  
om 1979 No. 54 s 6  
pres s 11 ins 1995 No. 44 s 13

**Interpretation**

**s 11A** ins 1975 No. 80 s 8  
amd 1976 No. 77 s 4; 1977 No. 59 s 3; 1979 No. 54 s 7; 1980 No. 54 s 4; 1982  
No. 64 s 4; 1984 No. 4 s 7; 1984 No. 107 s 5; 1985 No. 100 s 7; 1986  
No. 50 s 5; 1988 No. 99 s 5; 1990 No. 22 s 7; 1991 No. 74 s 5; 1992 No. 54  
s 5; 1995 No. 28 s 8; 1996 No. 48 s 7; 1997 No. 43 s 16

**Annual adjustments**

**s 11B** ins 1975 No. 80 s 9  
amd 1976 No. 77 s 5; 1979 No. 54 s 8

**Adjustment of pay-roll tax when employer ceases to be an employer during a financial year**

**s 11C** ins 1975 No. 80 s 9

**Arrangements for avoidance of tax may be disregarded**

**s 11D** ins 1984 No. 4 s 8

**Avoidance arrangements involving employment agents**

**s 11E** ins 1996 No. 70 s 21  
amd 2001 No. 71 s 551 sch 1

**Registration**

**s 12** amd 1975 No. 80 s 10; 1976 No. 77 s 6; 1977 No. 59 s 4; 1979 No. 54 s 9;  
1980 No. 54 s 5; 1982 No. 64 s 5; 1984 No. 4 s 9; 1984 No. 107 s 6; 1985  
No. 100 s 8; 1986 No. 50 s 6; 1988 No. 99 s 6; 1990 No. 22 s 8; 1991  
No. 74 s 6; 1992 No. 54 s 6; 1995 No. 28 s 9; 1995 No. 57 s 4 sch 1; 1996  
No. 48 s 8; 1997 No. 43 s 17

**Returns**

**s 13** amd 1975 No. 80 s 11; 1995 No. 57 s 4 sch 1

**Exemption from furnishing returns**

**s 14** amd 1975 No. 80 s 12; 1976 No. 77 s 7; 1995 No. 57 s 4 sch 1

**Further returns**

**s 15** amd 1975 No. 80 s 13

**PART 4A—GROUPING PROVISIONS**

**pt hdg** ins 1975 No. 80 s 14

**Interpretation**

**s 16A** ins 1975 No. 80 s 14

**Grouping of corporations**

**s 16B** ins 1975 No. 80 s 14  
amd 1981 No. 111 s 23 sch  
sub 1995 No. 57 s 4 sch 1  
amd 2001 No. 45 s 29 sch 3

**Grouping where employees used in another business**

**s 16C** ins 1975 No. 80 s 14  
amd 1984 No. 4 s 10; 2000 No. 48 s 7; 2001 No. 45 s 29 sch 3

**Grouping of commonly controlled businesses**

**s 16D** ins 1975 No. 80 s 14  
amd 1981 No. 111 s 23 sch; 1984 No. 4 s 11; 1995 No. 57 s 4 sch 1; 2000  
No. 48 s 8; 2001 No. 45 s 29 sch 3; 2001 No. 45 s 29 sch 3

**Grouping of head and branch businesses**

**s 16DA** ins 1984 No. 4 s 12  
amd 2000 No. 48 s 9

**Smaller groups subsumed into larger groups**

**s 16E** ins 1975 No. 80 s 14  
amd 1984 No. 4 s 13; 2000 No. 48 s 10

**Grouping provisions to operate independently**

**s 16F** ins 1975 No. 80 s 14

**Beneficiaries under discretionary trusts**

**s 16G** ins 1975 No. 80 s 14

**Exclusion of persons from group**

**prov hdg** sub 1985 No. 100 s 9  
**s 16H** ins 1975 No. 80 s 14  
amd 1981 No. 111 s 23 sch  
sub 1984 No. 4 s 14  
amd 1995 No. 57 s 4 sch 1; 2001 No. 45 s 29 sch 3

**Designated group employer**

**s 16I** ins 1975 No. 80 s 14  
amd 1979 No. 54 s 10; 1984 No. 4 s 15; 1995 No. 57 s 4 sch 1; 1999 No. 49  
s 38 sch

**Interpretation**

**s 16J** ins 1975 No. 80 s 14  
sub 1976 No. 77 s 8  
amd 1977 No. 59 s 5; 1979 No. 54 s 11; 1980 No. 54 s 6; 1982 No. 64 s 6;  
1984 No. 4 s 16; 1984 No. 107 s 7; 1985 No. 100 s 10; 1986 No. 50 s 7;  
1988 No. 99 s 7; 1990 No. 22 s 9; 1991 No. 74 s 7; 1992 No. 54 s 7; 1995  
No. 28 s 10; 1996 No. 48 s 9; 1997 No. 43 s 18

**Annual adjustment**

**s 16K** ins 1975 No. 80 s 14  
amd 1979 No. 54 s 12

**Adjustment of payment of pay-roll tax when members of a group cease to pay taxable wages or interstate wages during a financial year**

**s 16L** ins 1975 No. 80 s 14

**Assessments**

**s 18** amd 1975 No. 80 s 15

**Rounding down amounts of tax etc.**

**s 18A** ins 1992 No. 36 s 2 sch 1

**Refunds**

**s 19** amd 1976 No. 77 s 9

**Recovery of tax**

**s 23** amd 2001 No. 72 s 164 sch 1

**Liquidator to give notice**

**s 25** amd 1975 No. 80 s 16; 1981 No. 111 s 23 sch; 1990 No. 99 s 3.1 sch;  
1995 No. 57 s 4 sch 1; 2001 No. 45 s 29 sch 3

**Agent for absentee principal winding-up business**

**s 26** amd 1995 No. 57 s 4 sch 1

**Commissioner may collect tax from person owing money to employer**

s 31            amd 1995 No. 57 s 4 sch 1

**Offences**

s 35            amd 1985 No. 100 s 11; 1995 No. 57 s 4 sch 1

**Additional tax in certain cases**

s 36            amd 1973 No. 45 s 4

**Avoiding taxation**

s 37            amd 1995 No. 57 s 4 sch 1

**Time for commencing prosecutions**

s 38            amd 1985 No. 100 s 12

**Obstructing officers**

s 40            amd 1995 No. 57 s 4 sch 1

**Public officer of company**

s 41            amd 1975 No. 80 s 17

**Agents and trustees**

s 42            amd 1975 No. 80 s 18; 2000 No. 48 s 11

**Books, accounts etc. to be preserved**

s 44            amd 1995 No. 57 s 4 sch 1

**Evidence**s 46            amd 1975 No. 80 s 19; 1995 No. 57 s 4 sch 1; 1999 No. 49 s 38 sch;  
2001 No. 72 s 164 sch 1**Affidavit evidence in proceedings for recovery of tax**

s 46A          ins 1999 No. 13 s 33

**Signature of commissioner**

s 46B          ins 1999 No. 13 s 33

**Commissioner's certificate**

s 46C          ins 1999 No. 13 s 33

**Service of documents by the commissioner**

s 47            amd 1981 No. 111 s 23 sch; 1995 No. 57 s 4 sch 1; 2001 No. 45 s 29 sch 3

**Approval of forms**

s 50A          ins 1995 No. 57 s 4 sch 1

**Regulation-making power**

prov hdg      sub 1999 No. 13 s 34(1)

s 51            amd 1975 No. 80 s 20

sub 1993 No. 51 s 17

amd 1995 No. 57 s 4 sch 1; 1999 No. 13 s 34(2)–(5)

**Approved forms**

s 52            orig s 52 om 1988 No. 99 s 9

prev s 52 ins 1993 No. 51 s 17

exp 1 January 1994 (see s 52(2))

new s 52 ins 1995 No. 57 s 4 sch 1  
exp 28 February 1996 (see s 52(3)) (om R2)

## **8 List of forms**

**Form PR1 Version 2—Nomination of an Amount of General Deduction Pay-roll Tax Act 1971—Section 9(5)**

pubd gaz 30 July 1999 p 1898

**Form PR2 Version 5—Application for Registration**

pubd gaz 25 August 2000 pp 1473

**Form PR3 Version 4—Pay-roll Tax Return**

pubd gaz 25 August 2000 pp 1473

**Form PR4 Version 2—Designation of Group Employer Pay-roll Tax Act 1971—Section 16I(1)**

pubd gaz 30 July 1999 p 1898

**Form PR5 Version 1—Notice of Revocation of Nomination of a Member of a Group Pay roll Tax Act 1971—Section 16I(2)(b)**

pubd gaz 30 July 1999 p 1898