



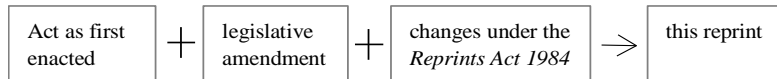
Western Australia

Pay-roll Tax Assessment Act 1971

Reprinted as at 4 October 2002

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Western Australia

Pay-roll Tax Assessment Act 1971

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Western Australia

**Reprinted under the
Reprints Act 1984 as
at 4 October 2002**

Pay-roll Tax Assessment Act 1971

**An Act relating to the assessment and collection of a tax upon wages
paid by employers.**

Part I — Preliminary

1. Short title

This Act may be cited as the *Pay-roll Tax Assessment Act 1971*¹.

[2. *Repealed by No. 10 of 1998 s. 76.*]

3. Interpretation

(1) In this Act, unless the contrary intention appears —

“**agent**” includes every person who in Western Australia, for or on behalf of another person outside Western Australia 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**” means approved by the Commissioner;

“**Australia**” means the States of the Commonwealth;

“**Commissioner**” means the person holding the office of Commissioner of State Taxation² under the *Public Sector Management Act 1994*;

“**Commonwealth Act**” means the *Pay-roll Tax Assessment Act 1941* of the Commonwealth;

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

“**corporation**” has the meaning given by section 57A of the Corporations Act;

“**Corporations Act**” means the *Corporations Act 2001* of the Commonwealth;

“**corresponding law**” in relation to another State means a law in force in that State relating to the imposition upon employers of a tax on wages paid or payable by them and

the assessment and collection of that tax, but does not include the Commonwealth Act;

“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 member 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 Western Australia and includes also a person who is an employment agent for the purposes of paragraph (f) of the definition of “wages” in this subsection;

“FBTA Act” means the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth;

“financial year” means each year commencing on 1 July;

“foreign wages” means wages that are not taxable wages and are not interstate wages;

“fringe benefit” means anything that is a fringe benefit under the FBTA Act but does not include anything that is prescribed under this Act not to be a fringe benefit;

“group” means a group constituted under Part IVA;

“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;

“month” means the month of January, February, March, April, May, June, July, August, September, October, November or December;

“pay-roll tax” means the pay-roll tax imposed by any Act as assessed under this Act;

“person” includes a company;

“prescribed benefit” means anything, including a benefit that under the FBTA Act is an exempt benefit, that is prescribed under this Act to be a benefit;

s. 3

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

“State” means a State of the Commonwealth, including the Territories deemed to be States pursuant to subsection (3);

“tax” means pay-roll tax, and also further tax additional tax or penal tax, or any interest on any such 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 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” has the meaning given by section 9 of the Corporations Act;

“wages” means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to, or in relation to, an employee as an employee 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 Western Australia or in the service of the Crown in right of the State of Western Australia;

- (aa) the amount of any superannuation benefit that is deemed by section 3A(1) to be paid by the employer;
 - (b) any amount paid or payable under any prescribed classes of contracts to the extent to which that payment is attributable to labour;
 - (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;
 - (ca) the provision of any wages, salary, commission, bonuses or allowances whether in cash or in kind to or in relation to an employee by any person acting for or in concert or under an arrangement or undertaking, whether formal or informal and whether expressed or implied, with the employer;
 - (d) any amount paid or payable by way of commission to an insurance or time-payment canvasser or collector;
 - (e) the value of any fringe benefit or prescribed benefit that is deemed by section 3B(4), to be paid or payable to an employee; and
 - (f) any amount paid or payable by way of remuneration by an employment agent directly or indirectly to a person who was engaged to perform services for a client of the employment agent, or to some other person in respect of those services, as a result of which engagement the employment agent receives directly or indirectly payment, whether by way of a lump sum or an ongoing fee, during or in respect of the period when the services are provided by that person to the client.
- (1a) For the purposes of this Act, allowances that are prescribed are excluded from being wages to the extent prescribed, or provided for, in the regulations.

s. 3

- (2) A benefit that is an exempt benefit under the FBTA Act other than —
- (a) any such benefit that is a prescribed benefit; or
 - (b) a benefit that is an exempt benefit under section 58W of the FBTA Act,

is not wages for the purpose of this Act.

- (2aa) The value of taxable wages (other than a fringe benefit or prescribed benefit deemed by section 3B to be wages) that are paid or payable in kind is the greater of —
- (a) the value —
 - (i) agreed or attributed to those taxable wages in; or
 - (ii) ascertainable for those taxable wages from, arrangements between the employer and the employee, whichever is the greater; or
 - (b) if regulations made under this Act prescribe how the value of a particular kind of such taxable wages is to be determined — the value so determined.
- (2ab) Any wages, salary, commission, bonuses or allowances provided in the circumstances referred to in paragraph (ca) of the definition of “wages” in subsection (1) shall be deemed to be paid or payable by the employer.
- (2a) For the purposes of paragraph (f) of the definition of “wages” in subsection (1), “**employment agent**” means a person (in this definition referred to as the agent) who by an arrangement procures the services of a person (in this definition referred to as the worker) for another person (in this definition referred to as the client) under which arrangement —
- (a) the worker does not become the employee of either the agent or the client but does carry out duties of a similar nature to those of an employee; and

- (b) remuneration is paid directly or indirectly by the agent to the worker or to some other person in respect of the services provided by the worker,

but this subsection does not apply to the current term of any arrangement entered into by an employment agent before 12 October 1982 which extends after 1 January 1983 if the Commissioner is satisfied that no provision was made in the arrangement for the payment of pay-roll tax in respect of that term.

- (3) For the purposes of this Act, the Australian Capital Territory (including the Jervis Bay Territory) and the Northern Territory of Australia are deemed to be States of the Commonwealth.

[Section 3 amended by No. 109 of 1975 s. 4; No. 106 of 1976 s. 4; No. 80 of 1981 s. 3; No. 10 of 1982 s. 28; No. 128 of 1982 s. 4; No. 33 of 1984 s. 3; No. 83 of 1985 s. 3; No. 8 of 1995 s. 4; No. 14 of 1996 s. 4; No. 13 of 1997 s. 9; No. 10 of 1998 s. 58(1); No. 10 of 2001 s. 149.]

3A. Superannuation component of wages

- (1) A contribution paid or payable by an employer in respect of a person to a superannuation fund is deemed, for the purposes of the definition of “wages” in section 3, to be a superannuation benefit paid by the employer in relation to the person when and where the contribution is paid or payable, except if clause 5 of Schedule 2 or regulations made under it provide otherwise.
- (2) Section 6(2) and (3) apply for the purposes of working out when and where the contribution is paid or payable as if those provisions referred to contributions instead of wages.
- (3) Schedule 2 has effect to —
- (a) deem contributions to be paid or payable in some cases for the purposes of this section;
 - (b) provide that in some cases a contribution, or part of it, is not deemed by subsection (1) to be a superannuation benefit;

s. 3B

- (c) define terms used in this section or that Schedule; and
- (d) provide for related matters.

[Section 3A inserted by No. 13 of 1997³ s. 10.]

3B. Fringe benefits and prescribed benefits

- (1) In this section and section 3C, unless the contrary intention appears —
“**provided**” has a meaning corresponding with the meaning of “provide” given by section 136 of the FBTA Act.
- (2) A fringe benefit that is provided or liable to be provided by a person other than the employer is deemed to be provided by the employer.
- (3) A prescribed benefit that is provided or liable to be provided to or in relation to an employee by a person acting for or in concert or under an arrangement or undertaking, whether formal or informal and whether express or implied, with the employer is deemed to be provided by the employer.
- (4) The value of a fringe benefit or of a prescribed benefit that is provided or liable to be provided to or in relation to an employee is deemed to be wages paid or payable (as the case requires) to the employee.

[Section 3B inserted by No. 13 of 1997 s. 11.]

3C. Value of fringe benefits and prescribed benefits

- (1) The value of a fringe benefit provided on or after 1 January 2002 is —
 - (a) the grossed-up value of the fringe benefit worked out in accordance with subsection (1a) (unless paragraph (b) applies to the fringe benefit); or
 - (b) if regulations made under this Act prescribe how the value of a particular kind of fringe benefit is to be determined — the value so determined.

- (1a) The grossed-up value of a fringe benefit is the amount worked out using the formula —

$$\text{taxable value of the fringe benefit} \times \text{appropriate gross-up factor}$$

where —

“appropriate gross-up factor” equals —

- (a) for a fringe benefit that is a GST-creditable benefit (within the meaning of the FBTA Act) — the factor by which the “Type 1 aggregate fringe benefits amount” is multiplied in section 5B(1B) of the FBTA Act; or
- (b) for a fringe benefit that is not a GST-creditable benefit — the factor by which the “Type 2 aggregate fringe benefits amount” is multiplied in section 5B(1C) of the FBTA Act;

“taxable value of the fringe benefit” equals —

- (a) if the benefit is a work-related benefit — the employee’s share of the taxable value of the fringe benefit under the FBTA Act; or
 - (b) if the benefit is not a work-related benefit — the employee’s share of the taxable value of the fringe benefit under the FBTA Act worked out without regard to any reduction of that taxable value under that Act because of the “otherwise deductible” rule.
- (2) The value of a prescribed benefit is that determined under the regulations.
- (3) In subsection (1a) a benefit is a work-related benefit if the benefit is provided to the employee in the course of performing the duties of his or her employment and for the purpose of enabling the employee to perform those duties.
- (4) In subsection (1a) the reference to the “**otherwise deductible**” rule is a reference to any enactment of the FBTA Act that provides for a reduction of the taxable value of a fringe benefit

s. 3D

because the person receiving the benefit, had he or she personally incurred the cost of providing it, would be allowed a deduction under the *Income Tax Assessment Act 1936* of the Commonwealth in relation to that cost.

[Section 3C inserted by No. 13 of 1997 s. 11; amended by No. 36 of 2001⁴ s. 8.]

3D. GST excluded from wages

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

(2) In this section —

“**consideration**” has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999*;

“**GST**” has the same meaning as it has in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999* except that it includes notional GST of the kind for which payments may be made under the *State Entities (Payments) Act 1999* by a person that is a State entity as defined in that Act;

“**relevant proportion**”, in relation to GST 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.

[Section 3D inserted by No. 53 of 1999 s. 15.]

Part II — Administration

4. Functions of Commissioner, etc.

- (1) The Commissioner shall have the general administration of this Act.
- (2) The Commissioner may by instrument in writing under his hand delegate to the person holding office as the Assistant Commissioner or to any other officer assisting the Commissioner in the administration of this Act all or any of his powers or functions under this Act, except this power of delegation or his power to issue a certificate under section 46(7).
- (3) A delegation under subsection (2) may be revoked at any time by the Commissioner.
- (4) A power or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate.
- (5) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.
- (6) Notwithstanding the provisions of subsection (2) or any delegation made under this section, the Commissioner may continue to exercise or perform all or any of the powers or functions conferred or imposed on him by this Act.
- (7) Any act or thing done or suffered by a delegate of the Commissioner while acting in the exercise of a delegation under this section, shall have the same force and effect as if the act or thing done had been done or suffered by the Commissioner.
- (8) Where the exercise or performance by the Commissioner of any power or function under this Act or the operation or any

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provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised or performed by a delegate of the Commissioner acting as such in relation to that matter, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of that delegate acting as such.

[Section 4 amended by No. 40 of 1979 s. 4.]

5. Disclosure of information

(1) Except as provided by subsection (2) or the *Taxation (Reciprocal Powers) Act 1989*, a person shall not disclose any information or publish any document or part of a document obtained by him 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;
- (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 proceedings.

Penalty: \$1 000.

(2) The Commissioner —

- (a) may disclose to an insurance company, for the purposes of the company determining the stamp duty to be paid on a policy of insurance issued or to be issued by it against an employer's liability to pay compensation under the *Workers' Compensation and Rehabilitation Act 1981*, whether the employer, in the 12 months immediately preceding the cover period of the policy, was liable to pay tax; and
- (b) shall, where the Treasurer has so approved, furnish to the Commonwealth Statistician or a Deputy Commonwealth Statistician such information (including

copies of or extracts from returns made under this Act) obtained in the administration or execution of this Act as the Commonwealth Statistician or a Deputy Commonwealth Statistician may request for the purposes of the *Census and Statistics Act 1905*, as subsequently amended, of the Commonwealth, or under any Act of the Commonwealth replacing or amending that Act, as so amended, or any Act of the Commonwealth relating to the making of grants of financial assistance to States.

[Section 5 amended by No. 18 of 1989 s. 16; No. 3 of 2001 s. 24.]

Part III — 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 paid or payable by an employer that —
 - (a) are for services performed or rendered wholly in Western Australia, irrespective of where they are paid or payable; or
 - (b) are paid or payable in Western Australia, except where they are for services performed or rendered —
 - (i) wholly in one other State; or
 - (ii) subject to subsection (1a), wholly in another country or other countries for a continuous period of more than 6 months after wages were first paid to the person for those services.
- (1a) The wages referred to in subsection (1)(b)(ii) are liable to pay-roll tax under this Act during the period of 6 months after wages were first paid for the services in question.
- (2) For the purposes of subsection (1)(b)(i) wages that are payable to a person by his employer, but have not been paid (not being wages that, under the terms of employment, are payable in Western Australia or in another State), shall be deemed —
 - [(a) deleted]*
 - (b) where those wages are not payable in respect of services performed or rendered wholly in Western Australia 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 Western Australia; or
 - (c) where those wages are not deemed, by paragraph (b) or by any provision in a corresponding law that corresponds with either of those paragraphs, to be wages

payable to that person in Western Australia or in another State — to be wages payable to that person by that employer at the place where that person last performed or rendered any services for that employer before those wages became payable.

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

[Section 6 amended by No. 106 of 1976 s. 5; No. 13 of 1997⁵ s. 12.]

7. Pay-roll tax

Subject to, and in accordance with, the provisions of this Act, there shall be charged, levied, collected and paid on all taxable wages pay-roll tax at such rate or rates as Parliament shall from time to time declare and enact.

[Section 7 amended by No. 54 of 1973 s. 3.]

8. Employers' liability to pay tax

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

9. Revocation or amendment of Commissioner's determination

The Commissioner may at any time revoke or vary a determination made by him under section 6 or 7 of the *Pay-roll Tax Act 1971* and shall inform every employer concerned of the revocation or variation and the date on which the revocation or variation has effect.

[Section 9 inserted by No. 83 of 1985 s. 4.]

s. 9E

[9A-9D. Repealed by No. 8 of 1995 s. 12.]

9E. Deduction from taxable wages after 31 December 1981

(1) In this section —

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

“**prescribed amount**” —

- (a) in relation to a return for a return period of one month, means the amount specified for the purposes of this definition in Schedule 1; and
- (b) in relation to a return for a return period of 2 or more months, means the product ascertained by multiplying the amount specified for the purposes of this definition in Schedule 1 by the number of months in that return period;

and

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

- (2) This section applies only so as to authorise a deduction to be made for a return period that is after the month of December 1981 from the taxable wages included in a return or assessment relating to that return period.
- (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, reduced by \$1 for each \$3 (disregarding any remainder) by which the amount of those taxable wages (in whole dollars) exceeds the prescribed amount.

- (4) For the purpose of ascertaining the pay-roll tax payable by an employer who pays or is liable to pay wages during a return period and pays or is liable to pay taxable wages for part only of that 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 amount that bears to the prescribed amount the same proportion as the number of days in that part of that return period bears to the total number of days in that return period, reduced by \$1 for each \$3 (disregarding any remainder) by which the amount of those taxable wages (in whole dollars) exceeds the same proportion of the prescribed amount.
- (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 containing the approved particulars, served on the Commissioner, nominate an amount, calculated in the approved manner, not exceeding the prescribed amount, as the deduction that he 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 he 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 him in writing by an employer who pays or is liable to pay taxable wages and interstate wages during any return period or of his own motion in relation to such an employer, at any time, make a determination specifying an amount, not exceeding the

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prescribed amount that may be deducted for any return period specified or referred to in the determination from the taxable wages included in a return made by, or an assessment relating to, that employer 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 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 him.
- (9) The Commissioner shall, as soon as practicable after making a determination under subsection (7) or a revocation under subsection (8) serve notice of the determination or revocation on the employer concerned.

[Section 9E inserted by No. 80 of 1981 s. 5; amended by No. 25 of 1983 s. 3; No. 97 of 1984 s. 3.]

10. Exemption from pay-roll tax

- (1) Subject to subsection (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;
 - (b) by a religious or public benevolent institution, or a public hospital;
 - (c) by a hospital which is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association;
 - (d) by a school or college (other than a college under the *Vocational Education and Training Act 1996*) which —
 - (i) is carried on by a body corporate, society or association otherwise than for the purpose of

- profit or gain to the individual members of the body corporate, society or association; and
- (ii) provides education at or below, but not above, the secondary level of education;
- (e) by a local government, a regional local government or one of the associations constituted under section 9.58 of the *Local Government Act 1995*;
 - (f) to members of his official staff by —
 - (i) a consular or other representative (other than a diplomatic representative) in Australia of the Government of any other part of Her Majesty's dominions or of any other country; or
 - (ii) a Trade Commissioner representing in Australia any other part of Her Majesty's dominions;
 - (g) by the Commonwealth War Graves Commission;
 - (h) by the Australian-American Educational Foundation;
 - (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 the employer from whose employment the person is on leave by reason of his being such a member;
 - (j) by an employer to a "probationer" or an "apprentice" (within the meaning of those terms in the *Industrial Training Act 1975*);
 - (k) by a body or organization exempted under subsection (3);
 - (l) by an employer to a trainee employed under a training agreement as part of the Australian Traineeship System established by the Governments of the Commonwealth and the State;

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- (la) on or after 1 January 1994 by an employer to a person employed as a trainee by agreement under a traineeship or training scheme that is —
 - (i) established or recognized as a traineeship or training scheme by the relevant Minister; and
 - (ii) not a prescribed traineeship or training scheme or a traineeship or training scheme of a prescribed class or description;
 - (m) out of moneys expended for the purpose of a division or portion thereof referred to in the annual estimates of expenditure from the Consolidated Fund prepared by the Treasurer in respect of the relevant financial year, being a division or portion thereof in respect of a department or other organization prescribed for the purposes of this paragraph or the division in respect of special Acts insofar as the estimates of expenditure in that division relate to such a department or other organization;
 - (ma) by an employer that under subsection (6) are prescribed as exempt wages; or
 - (n) by an employer as wages of a prescribed description to a person by reason of services performed or rendered by that person at a remote location.
- (2) Subsection (1) has effect only —
- (a) in the case of a religious institution, to wages paid or payable in respect of time when the employee is engaged in the religious work of the institution;
 - (b) in the case of a public benevolent institution, to wages paid or payable in respect of time when the employee is engaged in work of a public benevolent nature;
 - (c) in the case of a public hospital, to wages paid or payable in respect of time when the employee is engaged in work of a kind ordinarily performed in connection with the conduct of public hospitals;

- (d) in the case of a hospital of the kind referred to in subsection (1)(c), to wages paid or payable in respect of time when the employee is engaged in work of a kind ordinarily performed in connection with the conduct of hospitals;
 - (e) in the case of a school or college (other than a college under the *Vocational Education and Training Act 1996*) of the kind referred to in subsection (1)(d), to wages paid or payable in respect of time when the employee is engaged in work of a kind ordinarily performed in connection with the conduct of schools or colleges (other than colleges under the *Vocational Education and Training Act 1996*); and
 - (f) in the case of a body or organization exempted under subsection (3), to wages paid or payable in respect of time when the employee is engaged in work of the kind ordinarily performed in connection with any charitable purpose for which the body or organization is established or carried on.
- (3) The Commissioner may, by written notice given to a charitable body or organization that has made a written application for the purposes of this subsection —
- (a) declare the body to be exempt for the purposes of subsection (1)(k); and
 - (b) impose any condition subject to which the exemption shall have effect.
- (3a) In subsection (3) —
- “charitable body or organization”** means any body or organization established or carried on for charitable purposes other than —
- (a) a body or organization whose sole or principal purpose is the provision of tertiary education; or

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- (b) a college or other vocational education and training institution under the *Vocational Education and Training Act 1996*.
- (3b) The Commissioner shall specify in the notice the day on which the declaration comes into operation, being a day on or after the giving of the notice or a day prior to that day.
- (3c) The Commissioner may, by further written notice given to a body or organization that is exempted under subsection (3), amend or revoke the declaration of exemption and any condition to which the exemption is subject.
- (4) If the Commissioner is given notice by the relevant Minister that an agreement under a traineeship or training scheme referred to in subsection (1)(1a) has been terminated by reason of the failure of the trainee or the employer of the trainee to comply with the terms of the agreement during a period specified in the notice, the Commissioner may determine that the exemption under that subsection does not apply to the wages paid or payable by the employer of the trainee to the trainee during that period.
- (5) For the purposes of this section —
- “relevant Minister”** means the Minister to whom the administration of the *Industrial Training Act 1975* (or an Act which repeals that Act) is for the time being committed by the Governor;
- “remote location”** means a location that is not —
- (a) in an eligible urban area; or
- (b) adjacent to an eligible urban area,
- as those expressions are defined in section 140 of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.
- (6) Regulations may prescribe as exempt wages, the whole or part of wages paid or payable by an employer where the employer is entitled to recover an amount in respect of those wages from a fund, contributions to which are prescribed benefits.

[Section 10 amended by No. 80 of 1981 s. 6; No. 25 of 1983 s. 4; No. 33 of 1984 s. 4; No. 83 of 1985 s. 5; No. 67 of 1986 s. 4; No. 6 of 1993 s. 11; No. 22 of 1993 s. 4; No. 14 of 1996 s. 4; No. 20 of 1996¹³ s. 12; No. 13 of 1997⁶ s. 13.]

11. Special circumstances in which rate of tax may be ascertained on basis of whole or part of financial year

(1) In this section —

“**financial year**” means the financial year commencing on 1 July 2001 and each financial year thereafter.

(2) This section applies to an employer if —

- (a) the employer pays or is liable to pay taxable wages or interstate wages for part only of a financial year; and
- (b) the Commissioner is satisfied that, because of the employer’s trade or business, the employer’s liability to pay taxable wages or interstate wages fluctuates with different periods of the financial year.

(3) If the employer has conducted the trade or business in Australia —

- (a) during the whole of the financial year, the rate of pay-roll tax payable by the employer shall be ascertained in accordance with the relevant section of the *Pay-roll Tax Act 1971* as if the employer had paid or was liable to pay taxable wages or interstate wages during the whole of the year; or
- (b) during part only of the financial year, the rate of pay-roll tax payable by the employer shall be ascertained in accordance with the relevant section of the *Pay-roll Tax Act 1971* as if the employer had paid or was liable to pay taxable wages or interstate wages during that part of the financial year.

[Section 11 inserted by No. 3 of 2001 s. 3.]

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11A. “Financial year” for purposes of this section and sections 11B and 11C and “prescribed amount” for purposes of sections 11B and 11C

- (1) In this section and 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.
- (1a) In subsection (3) and in sections 11B and 11C, “**financial year**” means the financial year commencing on 1 July 1976 and each financial year thereafter.

[(2)-(2d) repealed]

- (2e) For the purposes of the financial year commencing on 1 July 1981 and each financial year thereafter, a reference in sections 11B and 11C to the “**prescribed amount**” is, in relation to an employer, a reference to the amount calculated for the purposes of the relevant financial year in accordance with Schedule 1.
- (3) Where 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 his trade or business, the taxable wages and interstate wages, if any, paid or payable by him fluctuate with different periods of the financial year, the Commissioner may treat him —
- (a) if he has conducted that trade or business in Australia during the whole of the financial year — as an employer throughout the financial year; or
 - (b) if he 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.

[Section 11A inserted by No. 109 of 1975 s. 8; amended by No. 106 of 1976 s. 10; No. 22 of 1977 s. 6; No. 40 of 1979 s. 7; No. 80 of 1981 s. 7; No. 8 of 1995 s. 12.]

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 the *Pay-roll Tax Act 1971* 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 —
- (aa) the Commissioner may, where the amount of pay-roll tax paid or payable by that employer when he 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 him under section 19;
 - (a) the Commissioner shall, on application made by that employer in accordance with subsection (3), where the amount of pay-roll tax paid or payable by that employer when he 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 him under section 19; or
 - (b) that employer shall, where the amount of pay-roll tax paid or payable by that employer when he 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 he is required to furnish a return under this Act in respect of the return period that is or includes the month

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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.

[Section 11B inserted by No. 109 of 1975 s. 8; amended by No. 106 of 1976 s. 11; No. 30 of 1988 s. 3.]

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 the *Pay-roll Tax Act 1971* 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 he shall, where the amount of pay-roll tax paid or payable by him when he 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 he 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 him 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).

[Section 11C inserted by No. 109 of 1975 s. 8.]

11D. Special annual adjustment

[(1)-(3) repealed]

- (3a) Where the Commissioner is satisfied that the total amount of pay-roll tax paid or payable by an employer or a designated group employer under this Act in respect of a financial year exceeds by more than \$10 the total amount of pay-roll tax which would have been paid or payable in respect of that financial year if the amount specified, or provided for, in Schedule 1 for the purposes of section 9E(1), 11A(2e), 12 or 16J(6) had not been amended with respect to that year, the Commissioner may, within 12 months of the end of the financial year or upon the making of an assessment in respect of that financial year after that period, refund or rebate the amount by which the first-mentioned total amount exceeds the second-mentioned total amount.
- (4) Where an employer or a designated group employer, on application made in the approved form to the Commissioner within 12 months after the end of a financial year or the date on which an assessment is made in respect of that financial year, satisfies the Commissioner that the total amount of pay-roll tax paid or payable by him under this Act in respect of that financial year exceeds by more than \$10 the total amount of pay-roll tax which would have been paid or payable in respect of that financial year if the amount specified, or provided for, in

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Schedule 1 for the purposes of section 9E(1), 11A(2e), 12 or 16J(6) had not been amended with respect to that year, the Commissioner shall refund or rebate the amount by which the first-mentioned total amount exceeds the second-mentioned total amount.

[Section 11D inserted by No. 106 of 1976 s. 11; amended by No. 22 of 1977 s. 7; No. 40 of 1979 s. 8; No. 80 of 1981 s. 8; No. 33 of 1984 s. 5; No. 30 of 1988 s. 4; No. 8 of 1995 s. 12; No. 10 of 1998 s. 58(2).]

11E. 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;
 - (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), he 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 his reasons for making the determination.

[Section 11E inserted by No. 128 of 1982 s. 5.]

Part IV — Registration and returns

12. Registration

- (1) An employer (not being an employer who is registered as an employer) who, during a month, pays or is liable to pay, anywhere, wages at a rate in excess of the amount per week prescribed for the purposes of this section in Schedule 1, the whole or any part of which is taxable wages, or who, being a member of a group, during a month pays or is liable to pay any taxable wages, shall apply, within 7 days after the close of that month, to the Commissioner in the approved form and manner, for registration as an employer, and thereupon the Commissioner shall register him as an employer under this Act.
- (2) The Commissioner may cancel the registration of a person as an employer if —
 - (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
 - (aa) immediately before the coming into operation of an Act amending the amount prescribed for the purposes of this section, that person is not an employer paying wages as referred to in subsection (1) at the rate as so amended; or
 - (b) that person —
 - (i) ceases to be a member of a group; and
 - (ii) does not pay and is not liable to pay wages as referred to in subsection (1).
- (2a) Where the Commissioner cancels the registration of a person as an employer in any financial year and that person subsequently pays or is liable to pay (otherwise than as a member of a group) taxable wages during that financial year that person may, notwithstanding that during any month he pays or is liable to pay wages at a rate not in excess of the amount per week prescribed for the purposes of this section in Schedule 1, apply to the Commissioner, in the approved form and manner, for

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registration as an employer and thereupon the Commissioner shall register him as an employer under this Act.

- (3) A person, who immediately before the commencement of this Act ¹, was the holder of a certificate in force under the regulations made under the Commonwealth Act to the effect that he was registered as an employer in respect of the State of Western Australia, shall be deemed to be registered as an employer under this Act but, where he is required, by a notice in writing served on him by the Commissioner, to apply to the Commissioner, within the time specified in the notice, for registration as an employer he shall cease to be deemed to be so registered upon the expiration of that time.

[Section 12 amended by No. 109 of 1975 s. 9; No. 106 of 1976 s. 13; No. 22 of 1977 s. 8; No. 40 of 1979 s. 9; No. 80 of 1981 s. 9.]

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 or such other period as the Commissioner may by notice in writing in a particular case direct, furnish to the Commissioner, in accordance with the approved form and manner, a return relating to that month and shall specify in that return any taxable wages that were paid or payable by him during that month.
- (2) An employer may apply in writing to the Commissioner for approval to furnish a return under subsection (1) on an annual basis or some other basis and if the Commissioner is satisfied that the requirement to furnish a monthly return under subsection (1) would in the circumstances of that employer be unduly onerous, the Commissioner may by notice in writing grant approval to that employer to furnish a return in respect of some other period stipulated in the notice and where such approval is granted and remains in force, the employer shall

furnish a return under subsection (1) within 21 days after the end of each such period.

- (3) The Commissioner may at any time by notice in writing revoke a notice given by him to an employer under subsection (1) or (2).
- (4) Every employer to whom section 6 or 7 of the *Pay-roll Tax Act 1971* applies shall, within 2 months after the close of each financial year, or within such longer period as the Commissioner may in a particular case allow, furnish to the Commissioner, in accordance with the approved form and manner, a return relating to that year and shall specify in that return the total of interstate wages paid or payable by that employer during that year.

[Section 13 amended by No. 80 of 1981 s. 10; No. 83 of 1985 s. 6; No. 31 of 1986 s. 4; No. 96 of 1987 s. 4; No. 29 of 1988 s. 4; No. 30 of 1988 s. 5; No. 8 of 1989 s. 4; No. 54 of 1990 s. 4; No. 7 of 1992 s. 4; No. 65 of 1992 s. 4; No. 22 of 1993 s. 5; No. 41 of 1994 s. 4.]

14. Exemption from furnishing returns

- (1) If the Commissioner is of the opinion that tax will not be payable by an employer, or, if paid, would be refunded, he may issue a certificate to that employer exempting him from furnishing monthly returns in accordance with the provisions of section 13 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 an annual return within 21 days after the close of each 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).

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- (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.

[Section 14 amended by No. 109 of 1975 s. 10; No. 80 of 1981 s. 11.]

15. Further returns

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

[Section 15 amended by No. 109 of 1975 s. 11.]

16. Power to obtain information and evidence

- (1) The Commissioner may, by notice in writing, require any employer or person —
- (a) to furnish him with such information as he requires; or
 - (b) to attend and give evidence before him,
- for the purpose of inquiring into or ascertaining his or any other person's liability or entitlement under any of the provisions of this Act, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.
- (2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration and for that purpose he may administer an oath.
- (3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

Part IVA — Grouping provisions

[Heading inserted by No. 109 of 1975 s. 12.]

16A. Interpretation

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

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

[Section 16A inserted by No. 109 of 1975 s. 12.]

16B. Grouping of corporations

For the purposes of this Act, 2 corporations constitute a group if they are related to each other within the meaning of section 50 of the Corporations Act.

[Section 16B inserted by No. 8 of 1995 s. 5; amended by No. 10 of 2001 s. 150.]

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, one or more of his 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

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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 he 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 persons, exclude him or them from the group.

[Section 16C inserted by No. 109 of 1975 s. 12; amended by No. 80 of 1981 s. 12.]

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 one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business —

- (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 one 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, more than 50% 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 beneficially or not) more than 50% of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether beneficially or not) to more than 50% 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 more than 50% of the value of the interests in the trust firstmentioned in this paragraph;

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- (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he 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) Where a corporation has a controlling interest under subsection (3) in a business it shall, for the purposes of subsection (3), be deemed to have a controlling interest in any other business in which another corporation that is related to it within the meaning of section 50 of the Corporations Act has a controlling interest under subsection (3).
- (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, for the purposes of subsection (3), 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 more than 50% 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) and (8) repealed]

- (9) Where a member of a group is included in that group by reason of carrying on a business in which a person has, or persons have together, a controlling interest under subsection (3)(d) or subsection (6) as the beneficiary or beneficiaries under a discretionary trust, the Commissioner may, by order in writing served on the person or persons who is or are that member, exclude him or them from that group if after considering —
- (a) the nature and degree of ownership and control of the businesses;
 - (b) the nature of the businesses; and
 - (c) any other matter that the Commissioner considers relevant,

the Commissioner is satisfied that the business is carried on by him or them substantially independently of the business carried on by any other member of the group and that it is just and reasonable for him or them to be excluded from the group.

[Section 16D inserted by No. 109 of 1975 s. 12; amended by No. 80 of 1981 s. 13; No. 10 of 1982 s. 28; No. 31 of 1986 s. 5; No. 22 of 1993 s. 6; No. 8 of 1995 s. 6; No. 10 of 2001 s. 151.]

16DA. Grouping of head and branch businesses

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

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the Commissioner may, by order in writing served on that person or persons, exclude him or them from the group.

[Section 16DA inserted by No. 128 of 1982 s. 6.]

16E. Smaller groups subsumed into larger groups

- (1) 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.
- (1a) Where the members of a group (referred to as a smaller group in subsection (2)) have together a controlling interest in a business, the members of the group and the person or persons who carry on the business constitute one group for the purposes this Act.
- (2) Except for the purpose of —
 - (a) determining whether a group is constituted under subsection (1) or (1a); or
 - (b) the making of an order under section 16C(2), 16D(9) or 16DA(2),

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) or (1a).

- (3) In this section —
“**controlling interest**” has the same meaning as it has in section 16D.

[Section 16E inserted by No. 8 of 1995 s. 7; amended by No. 36 of 2001 s. 11.]

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.

[Section 16F inserted by No. 109 of 1975 s. 12.]

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 section 16D, to be a beneficiary in respect of more than 50% of the value of the interests in that trust.

[Section 16G inserted by No. 109 of 1975 s. 12; amended by No. 31 of 1986 s. 6; No. 22 of 1993 s. 7.]

16H. Exclusion of persons from groups

- (1) An order may be made under section 16C, 16D or 16DA to exclude a person or persons from a group if an application, setting out the grounds on which it is made and supported by a statement of the reasons for the existence of those grounds, is made by that person or those persons.
- (2) Notwithstanding subsection (1) the Commissioner may, of his own motion, make an order to exclude a person or persons from a group if, on information in his possession, he is satisfied as required by the provision under which the order is authorised to be made.
- (3) The Commissioner shall not, under section 16C, 16D or 16DA, make an order so as to exclude a person from a group on and from a date if that person is, or was on that date, a corporation which is related, within the meaning of section 50 of the Corporations Act, to another corporation which is a member of that group.

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- (4) A person who is excluded from a group by order of the Commissioner under section 16C, 16D or 16DA 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.
- (5) 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 or 16DA.
- (6) Notwithstanding any other provision of this Part, an order under section 16C(2), 16D(9) or 16DA(2) 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.

[Section 16H inserted by No. 80 of 1981 s. 15; amended by No. 10 of 1982 s. 28; No. 128 of 1982 s. 7; No. 33 of 1984 s. 6; No. 22 of 1993 s. 8; No. 8 of 1995 s. 8; No. 10 of 2001 s. 152.]

16I. Designated group employer

- (1) The members of a group may, by an instrument in writing in the approved form containing the approved particulars, executed by or on behalf of each member of the group and served on the Commissioner, designate one 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 approved manner, not exceeding —

[(a)-(d) deleted]

- (e) in relation to a return period commencing on or after 1 January 1982 the prescribed amount as defined in section 9E(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 one 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 him 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 containing the approved particulars, 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 one of their members to be the designated group member in substitution for the member whose designation is revoked.

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- (2b) Where the Commissioner has exercised the powers conferred on him by subsection (1a), he may, by instrument in writing served on the member of the group designated as the designated group employer, revoke his designation of that member as the designated group employer and thereafter may further exercise the powers conferred on him 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 him 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 him in writing executed by or on behalf of each person known to the Commissioner to be a member of a group or of his own motion in relation to a group, at any time, make a determination specifying an amount, not exceeding —
- [(a)-(d) deleted]*
- (e) in relation to a return period commencing on or after 1 January 1982, the prescribed amount as defined in section 9E(1),

that may be deducted for any such 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 as 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 him.
- (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 group employer in respect of the group of which he was then a member and shall, subject to subsection (2) or (2b), 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.

[Section 16I inserted by No. 109 of 1975 s. 12; amended by No. 106 of 1976 s. 14; No. 22 of 1977 s. 9; No. 40 of 1979 s. 10; No. 80 of 1981 s. 16; No. 128 of 1982 s. 8; No. 8 of 1995 s. 12.]

16J. “Prescribed amount” for purposes of sections 16K and 16L

[(1)-(5) repealed]

- (6) For the purposes of the financial year commencing on 1 July 1981 and each financial year thereafter a reference in sections 16K and 16L to the prescribed amount is, in relation to a designated group employer, a reference to the amount calculated for the purposes of the relevant financial year in accordance with Schedule 1.

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[Section 16J inserted by No. 106 of 1976 s. 15; amended by No. 22 of 1977 s. 10; No. 40 of 1979 s. 11; No. 80 of 1981 s. 17; No. 8 of 1995 s. 12.]

16K. Annual adjustment

- (1) This section applies in relation to a group at least one member of which paid or was liable to pay, as such a member, taxable wages or interstate wages during 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 the *Pay-roll Tax Act 1971*, 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 year there was only one designated group employer in respect of that group — the prescribed amount applicable to that designated group employer; or
 - (ii) during that year there were 2 or more designated group employers in respect of that group — the prescribed amount that, if there had been only one designated group employer in respect of that group during that year, would have been applicable to that designated group employer had he paid all of the taxable wages referred to in paragraph (a) paid or payable during that 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.

- (3a) 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 may refund or rebate to the person who was the designated group employer in respect of that group on 30 June in that financial year 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 year were made or required to be made under this Act by that member.
- (4) Where the actual amount of pay-roll tax paid or payable in respect of a financial year commencing on or after 1 July 1976, 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 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 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 commencing on or after 1 July 1976, 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 he is required to furnish a return under this Act in respect of the

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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 he is required to pay under subsection (5) in respect of a financial year, every person who was a member of the group 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.

[Section 16K inserted by No. 109 of 1975 s. 12; amended by No. 106 of 1976 s. 16; No. 33 of 1984 s. 7; No. 30 of 1988 s. 6.]

16L. Adjustment 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 one 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 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 one 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 the *Pay-roll Tax Act 1971*, 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 one 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 one designated group employer in respect of that group during that prescribed period, would have been applicable to that designated group employer had he paid all of the wages referred to in paragraph (a) paid or payable during that prescribed period.
- (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 he 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) Subsections (4) and (5) of section 16K apply in relation to a group to which this section applies as if —
- (a) at least one 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;
 - (b) the reference in section 16K(3) to the actual amount of pay-roll tax paid or payable in respect of a financial year

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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 he is required to pay under subsection (4) in respect of a period, every person who was a member of the group during the financial year that includes that period is liable, jointly and severally, to pay that amount to the Commissioner.

[Section 16L inserted by No. 109 of 1975 s. 12; amended by No. 33 of 1984 s. 8.]

Part V — Collection and recovery of tax

17. Time for payment of tax

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

18. Assessments

- (1) Where the Commissioner finds in any case that pay-roll tax or further tax is payable by any employer, the Commissioner may —
 - (a) assess the amount of taxable wages 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 the regulations or by the Commissioner;
 - (b) the Commissioner is not satisfied with the return made by any employer; or
 - (c) the Commissioner has reason to believe or suspect that any employer (though he may not have furnished any return) is liable to pay pay-roll tax,

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

- (3) Subsection (2) 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

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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 he establishes, on objection or appeal, that the amount determined 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, an amount equal to the amount of that pay-roll tax or further tax (reduced by the amount of any additional tax for which that employer became liable by reason of his being an employer to whom section 36(1)(b) applied and which he has paid in respect of the taxable wages in respect of which the pay-roll tax or further tax was assessed) but the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.
- (6) As soon as conveniently may be after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and of the pay-roll tax, further tax or additional tax to be served on the employer liable to pay it and such notice shall contain the Commissioner's calculation of the assessment and of the payroll tax, further tax or additional tax and his reasons for such assessment.
- (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.

[Section 18 amended by No. 109 of 1975 s. 13; No. 128 of 1982 s. 9.]

19. Refunds

- (1) Subject to subsection (2), where the Commissioner finds in any case that tax has been overpaid he shall refund to the employer who paid the tax the amount of tax found to be overpaid.
- (2) The Commissioner is not obliged to make a refund under subsection (1) unless an application in the approved form is made to him for the refund of the tax overpaid within 2 years after the overpayment of the tax.

20. Employer leaving Australia

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

21. Time to pay — extensions and instalments

- (1) The Commissioner may, in such cases as he thinks fit —
- (a) extend the time for payment of any tax by such period as he considers the circumstances warrant; or
 - (b) permit the payment of tax to be made by instalments within such time as he considers the circumstances warrant.
- (2) Interest at the rate of 20% per annum shall be paid on any tax which is not paid before the expiration of the time specified in section 17 or 18 from that time until the tax is paid, but the

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Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit such interest or any part thereof.

[Section 21 amended by No. 33 of 1984 s. 9.]

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 of an amount equal to the amount of the pay-roll tax, further tax or additional tax, as the case may be.
- (2) The Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the penal tax or any part thereof.

[Section 22 amended by No. 128 of 1982 s. 10.]

23. Recovery of tax

- (1) Tax shall be deemed when it becomes due and payable to be a debt 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 official name.
- (3) Any tax payable under this Act by a member or members of a group is a debt due jointly and severally by every person who is a member of the group during the period in which the tax becomes due.

[Section 23 amended by No. 80 of 1981 s. 18.]

24. Substituted service

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

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

service of any process in the proceedings may, without leave of the court, be effected on him by posting it or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in Australia.

25. Liquidator to give notice

- (1) Every person who is liquidator of any company which is being wound-up and which is, or on or after 1 September 1971, has been an employer registered or required to be registered under this Act, shall, within 14 days after he has become liquidator of that company, serve on the Commissioner notice in writing of his appointment as liquidator.
- (2) The Commissioner shall, as soon as practicable thereafter, notify to the liquidator the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company.
- (3) The liquidator —
 - (a) shall not without leave of the Commissioner part with any of the assets of the company until he has been so notified;
 - (b) shall set aside out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
 - (c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the tax.

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

Penalty: \$2 000.

- (5) Where more persons than one are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of those persons and, where any one of those persons has paid the tax due in respect of the company being wound-up, the other person or persons shall each be liable to pay that person his equal share of the amount of the tax so paid.
- (6) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator in the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any tax payable in respect of the company.
- (7) The provisions of this section do not limit the liability of a liquidator under section 42 or his liability, as a trustee, under Part IVA.
- (7a) The notice requirements imposed on a liquidator by this section are in addition to the provisions of the Corporations Act.
- (8) Any notice given by a liquidator under the Commonwealth Act of his appointment as a liquidator shall be deemed to be a notice of his appointment as a liquidator served on the Commissioner in accordance with subsection (1), and the provisions of this section other than subsection (1) apply to and in relation to a liquidator by whom notice was so given under the Commonwealth Act.

[Section 25 amended by No. 109 of 1975 s. 14; No. 10 of 1982 s. 28; No. 128 of 1982 s. 11; No. 8 of 1995 s. 10; No. 10 of 2001 s. 153.]

26. Agent for absentee principal winding-up business

- (1) Where an agent for an absentee principal has been required by the principal to wind-up the business of his principal he shall, before taking any steps to wind-up the business, notify the Commissioner of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any tax that becomes payable.
- (2) An agent who fails to give notice to the Commissioner or fails to provide for payment of the tax as required by this section shall be personally liable for any tax that becomes payable in respect of the business of the principal, and shall be guilty of an offence.
Penalty: \$2 000.
- (3) Any notice given by an agent for an absentee principal under the Commonwealth Act of his intention to wind-up the business of his principal shall be deemed to be a notice of his intention to do so served on the Commissioner in accordance with subsection (1), and the provisions of subsections (1) and (2) apply to and in relation to an agent for an absentee principal by whom notice was so given under the Commonwealth Act.

[Section 26 amended by No. 128 of 1982 s. 12.]

27. Where tax not paid during lifetime

- (1) The following provisions of this section apply where, whether intentionally or not, a person escapes full payment of tax in his lifetime by reason of his not having duly made any, or full, complete and accurate returns.
- (2) The Commissioner has the same powers and remedies against the trustees of the estate of that person in respect of the liability

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to which that person was subject as he would have had against that person if he were still living.

- (3) The trustees shall make such returns under this Act as the Commissioner requires.
- (4) The trustees are subject to tax to the same extent as the deceased person would be subject to tax if he were still living, but the Commissioner may in a particular case, for reasons that, in his discretion, he thinks sufficient, remit any tax or a part thereof.
- (5) The amount of any tax payable by the trustees is a charge on all the deceased person's estate in their hands in priority to all other encumbrances.

28. Provision for payment of tax by executors or administrators

- (1) Where, at the time of an employer's death, he had not paid the whole of the tax payable up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the executors and administrators as he would have had against that employer, if he were alive.
- (2) The executors or administrators shall furnish such of the returns mentioned in Part IV as have not been made by the deceased.
- (3) Where the executors or administrators are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the taxable wages on which, in his judgment, pay-roll tax ought to be charged.
- (4) Where, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within 6 months of his death, the Commissioner may cause an assessment to be made of the amount of tax due by the deceased.
- (5) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State of the Commonwealth 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 he relies and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the deceased.
- (7) Subject to any amendment of the assessment by the Commissioner, or by the Court under section 33, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.
- (8) The Commissioner may issue an order in a form approved by the Commissioner authorising any member of the police force or any other person named therein to levy the amount of tax due by the deceased, with costs, by distress and sale of any property of the deceased.
- (9) Upon the issue of any such order the member or person so authorised shall have power to levy that amount in the prescribed manner.
- (10) Notwithstanding anything contained in subsections (7), (8) and (9), 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 an objection against the assessment stating fully and in detail the grounds on which he relies, and the Commissioner shall consider any such objection and shall make such amendment (if any) as he considers necessary.

[Section 28 amended by No. 22 of 1998 s. 55.]

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

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recover the amount so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in his hands belonging or payable to that other person.

30. Recovery of tax paid where persons jointly liable

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 his request, or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute.

31. Commissioner may collect tax from person owing money to employer

- (1) The Commissioner may, by notice in writing (a copy of which shall be served on the employer at his last known place of abode or business), require —
 - (a) any person by whom any money is due or accruing or may become due to an employer;
 - (b) any person who holds or may subsequently hold money for or on account of an employer;

- (c) any person who holds or may subsequently hold money on account of some other person for payment to an employer; or
- (d) any person having authority from some other person to pay money to an employer,

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

- (2) Any person who fails to comply with any notice under this section shall be guilty of an offence.
Penalty: \$2 000.
- (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 him, are paid before any payment is made under a notice given in pursuance of this section, the Commissioner shall forthwith give notice to the person of the payment.
- (6) In this section “**tax**” includes any judgment debt and costs in respect of any tax.

[Section 31 amended by No. 128 of 1982 s. 13.]

Part VI — Objections and appeals

32. Objections

- (1) An employer who is dissatisfied with any decision made by the Commissioner under this Act, by which his liability to pay tax is affected, or with any assessment or determination made by the Commissioner under this Act, may, within 42 days, or such longer period as the Commissioner may in writing allow, after service of notice of the decision, assessment or determination, as the case may be, post to, or lodge with, the Commissioner an objection in writing stating fully and in detail the grounds on which he relies.
- (1a) Despite subsection (1), an employer has no right of objection with respect to a decision of the Commissioner —
 - (a) under section 10(3b) that a declaration is not to come into operation from a day prior to the giving of the notice of declaration; or
 - (b) under the regulations allowing an employer to change the basis of calculating the value of fringe benefits during a financial year.
- (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 he would have had if the amended assessment had not been made except to the extent to which, by reason of the amended assessment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.
- (3) The Commissioner shall consider the objection, and may either disallow it, or allow it, either wholly or in part.
- (4) If the employer's liability or assessment has been reduced by the Commissioner after considering the objection, the Commissioner shall refund to the employer any amounts paid by him in excess.

- (5) The Commissioner shall serve on the objector written notice of his decision on the objection and the grounds for that decision.
- (6) In this section, “**employer**” includes a member of a group other than the member of the group who is the designated group employer.

[Section 32 amended by No. 80 of 1981 s. 19; No. 29 of 1986 s. 4; No. 13 of 1997 s. 14.]

33. Appeal

- (1) When an employer who has objected under section 32 to a decision made by the Commissioner under this Act by which his liability to pay tax is affected or to any assessment or determination made by the Commissioner under this Act is dissatisfied with the decision of the Commissioner on that objection, he may, within 42 days after the service on him of notice of that decision or such longer period after that service as the Supreme Court may allow, appeal to the Supreme Court against that decision.
- (2) The Supreme Court shall hear and determine an appeal under subsection (1), and for the purposes of this section —
 - (a) the jurisdiction of the Supreme Court may be exercised by a Judge sitting in chambers; and
 - (b) Rules of Court may be made for regulating the procedure and practice to be followed on an appeal to the Supreme Court under subsection (1).
- (3) An employer may amend the grounds stated in his objection on such terms (if any) as the Supreme Court thinks fit.
- (4) If the employer’s liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.
- (5) In this section, “**employer**” includes a member of a group other than the member of the group who is the designated group employer.

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[Section 33 amended by No. 80 of 1981 s. 20; No. 29 of 1986 s. 5.]

33A. Commissioner may state case

- (1) The Commissioner may state a case on any question of law arising with regard to any decision, assessment or determination made by the Commissioner under this Act and forward that case to the Supreme Court for its opinion thereon.
- (2) The Supreme Court shall give its opinion on any case forwarded to it under subsection (1) and cause the Commissioner to be notified of that opinion.

[Section 33A inserted by No. 80 of 1981 s. 21.]

34. Pending appeal not to delay payment of tax

- (1) The fact that an objection, appeal or case stated 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 objection, appeal or case stated, and the tax may be recovered as if no objection, appeal or case stated were pending.
- (2) If the liability or assessment is altered on an objection, appeal or case stated, 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.
- (3) Where the Commissioner is required to refund any amount under subsection (2), the Commissioner shall pay interest on the amount refunded at the prescribed rate from the date of payment of the tax to which the refund relates.

[Section 34 amended by No. 33 of 1984 s. 10; No. 29 of 1986⁷ s. 6.]

Part VII — Penal provisions

35. Offences

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

shall be guilty of an offence.

Penalty: \$2 000.

- (2) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section 37.
- (3) Where an offence against this section arises under subsection (1)(a) or (d) by reason of the neglect or failure of a person to do anything within a particular period, the offence shall, for the purposes of subsection (2), be deemed to continue for as long as the thing remains undone, notwithstanding that that period has elapsed.

[Section 35 amended by No. 128 of 1982 s. 14.]

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36. Additional tax in certain cases

- (1) Notwithstanding anything contained in section 35, any employer who —
- (a) fails or neglects, otherwise than as referred to in paragraph (b), duly to furnish any return or information as and when required by this Act or by the Commissioner shall be liable to pay by way of additional tax an amount equal to the amount of pay-roll tax payable by him; or
 - (b) furnishes a return to the Commissioner, but fails or neglects to include in that return all of the taxable wages required by this Act to be included in that return shall be liable to pay by way of additional tax an amount equal to 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,
- in addition to any penal tax that is or may become payable under section 22.
- (2) The Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.
- (3) If the Commissioner considers that the circumstances of any case warrant action being taken to recover the penalty provided by section 35, that action may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

[Section 36 amended by No. 128 of 1982 s. 15.]

37. Avoiding taxation

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

Penalty: \$2 000 and treble the amount of pay-roll tax avoided or attempted to be avoided.

[Section 37 amended by No. 128 of 1982 s. 16.]

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) or (c) may be commenced any time.

39. Penalties not to relieve from tax

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

40. Obstructing officers

Any person who obstructs or hinders any officer of the State Taxation Department¹⁵ acting in the administration of this Act shall be guilty of an offence.

Penalty: \$2 000.

[Section 40 amended by No. 128 of 1982 s. 17.]

Part VIII — Miscellaneous

41. Public officer of company

- (1) The Commissioner may, by notice served on a company, require the company to appoint, within such period as is specified in the notice, a public officer (being a natural person whose principal place of residence is in Western Australia) 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 he is required to do in his representative capacity shall be deemed to have been done by the company and the absence or non-appointment of a public officer does not excuse the company from the necessity of complying, or from any penalty for failure to comply, with any of the provisions of this Act, but the company is liable to comply with the provisions of this Act as if there were no requirement to appoint a public officer.
- (6) A notice served on or requisition made upon the public officer shall be deemed to be served on or made upon the company.
- (7) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and

the company is liable jointly with the public officer for any penalty imposed upon him.

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

[Section 41 amended by No. 109 of 1975 s. 15.]

42. Agents and trustees

- (1) With respect to every agent and with respect also to every trustee, the following provisions shall apply: —
- (a) He shall be answerable as an employer for the doing of all such things as are required to be done by virtue of this Act in respect of the payment of any wages which are subject to pay-roll tax under this Act.
 - (b) He shall, in respect of any such wages, make the returns and be chargeable with pay-roll tax thereon, but in his representative capacity only, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other.
 - (c) If he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
 - (d) Where as agent or trustee he pays tax, he is hereby authorised to recover the amount so paid from the person on whose behalf he paid it, or to deduct it from any money in his hands belonging to that person.

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- (e) He is hereby authorised and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax.
 - (f) He is hereby made personally liable for the tax payable if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he, except with the written permission of the Commissioner, disposes of or parts with any fund or money which comes to him from or out of which tax could legally be paid, but he shall not be otherwise personally liable for the tax.
 - (g) He is hereby indemnified for all payments which he makes in pursuance of this Act or by the requirements of the Commissioner.
 - (h) For the purpose of ensuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other person in respect of tax, and in as full and ample a manner.
- (2) Nothing in subsection (1) affects the operation of Part IVA in relation to trustees.

[Section 42 amended by No. 109 of 1975 s. 16.]

43. Person in receipt or control of money for absentee

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

- (a) He shall when required by the Commissioner pay the tax due and payable by the person on whose behalf he has the receipt, control or disposal of money.

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

44. Books, accounts etc., to be preserved

- (1) Every person who is an employer registered or required to be registered under this Act shall, for the purposes of this Act, keep proper books or accounts and shall preserve those books or accounts, and any prescribed documents, for a period of not less than 5 years, or such greater period as may be prescribed, after the completion of the transactions to which they relate.
Penalty: \$2 000.
- (2) This section shall not apply so as to require the preservation of any books, accounts or documents —
 - (a) in respect of which the Commissioner has notified the employer that preservation is not required; or

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- (b) of a company which has gone into liquidation and which has been finally dissolved.

[Section 44 amended by No. 128 of 1982 s. 18; No. 13 of 1997 s. 15.]

45. Access to books, etc.

The Commissioner, or any officer authorised by him in writing, whether generally or in a specific case, shall 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.

[Section 45 amended by No. 80 of 1981 s. 22.]

46. Evidence

- (1) For the purposes of any proceedings against a person for the recovery of tax, a certificate purporting to be signed by the Commissioner certifying that —
 - (a) the employer named in the certificate was liable to tax in respect of the period specified in the certificate;
 - (b) an assessment of tax was duly made against him;
 - (c) the particulars of the assessment are as stated in the certificate;
 - (d) notice of the assessment was duly served upon the employer; or
 - (e) the amount specified in the certificate was at the date of the certificate payable as tax by the employer named in the certificate,

shall be *prima facie* evidence of the matters so certified.

- (2) The production of any document or a copy of a document under the hand or purporting to be under the hand of the Commissioner, or purporting to have been issued by the Commissioner (that document or copy purporting to be a notice

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

- (3) The production of any document purporting to be under the hand of the Commissioner (that document purporting to be a copy of or extract from any document or return furnished to, or of any document issued by, the Commissioner), shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.
- (4) In any proceedings against a person for failing or neglecting duly to furnish a return, a certificate in writing purporting to be signed by the Commissioner certifying that the return has not been received from that person 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

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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 certificate, purporting to be under the hand of the Commissioner certifying that on a day specified in the certificate a person named in the certificate was a delegate of the Commissioner under section 4 to whom such powers and functions of the Commissioner as are specified in the certificate had been delegated on terms, if any, so specified shall be *prima facie* evidence of the matters so certified.

47. Service of documents by the Commissioner

- (1) Any certificate, notice, form or other document required or authorised by this Act to be served or given by the Commissioner shall be deemed to have been duly served upon or given to a person —
- (a) if delivered personally to, or if left at his address as shown on the return last furnished by him, with some person apparently in his employment; or
 - (b) if sent by prepaid letter post, addressed to the person at his address as shown on the last return furnished by him.
- (2) Service of a certificate, notice, form or other 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) The provisions of this section are in addition to and not in derogation of any other provisions of this Act relating to the service of documents, the *Interpretation Act 1984* or any provisions of the Corporations Act relating to the service of documents.

[Section 47 amended by No. 22 of 1977 s. 11; No. 10 of 1982 s. 28; No. 8 of 1995 s. 11; No. 10 of 2001 s. 154.]

48. Service of documents on the Commissioner

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

49. Institution of prosecutions

- (1) A complaint for an offence against any provision of this Act may be laid in the name of the Commissioner by any officer of the State Taxation Department¹⁵ authorised to lay complaints on behalf of the Commissioner, and any prosecution instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.
- (2) An officer referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for an offence against any provision of this Act.

[Section 49 amended by No. 80 of 1981 s. 23.]

50. Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to —
 - (a) the evidence that the Commissioner may require for the purpose of determining whether or not an employer was an employer for part only of a financial year, whether or not a person was or was not a member of a group or whether or not a notice under section 13(2), or a certificate under section 14(1), should be given.
 - (aa) the records and other evidence required to be kept in respect of —
 - (i) allowances prescribed under section 3(1a); and
 - (ii) anything affecting the extent to which those allowances are excluded from being wages;

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- (b) the furnishing and signing of returns, applications, notices, statements or forms by or on behalf of employers and deeming any return, application, notice, statement or form signed on behalf of an employer to have been signed by the employer;
 - (ba) the value of a fringe benefit paid or payable by an employer that is to be included in a return;
 - (bb) any other matter for the application of this Act to a fringe benefit or a prescribed benefit;
 - (c) the authentication of any certificate, notice or other document issued for the purpose of this Act or any regulation;
 - (d) the manner of notifying the appointment of a public officer of a company; or
 - (e) prescribing any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations —
- (a) may be so made as to have a different application according to such factors as may be specified in the regulations; and
 - (b) may impose a penalty not exceeding \$500 for any offence against the regulations.

[Section 50 amended by No. 109 of 1975 s. 17; No. 13 of 1997⁸ s. 16.]

Schedule 1 — Prescribed amounts

[Sections 9E, 11A, 12 & 16J]

1. Prescribed amount for s. 9E

The amount specified for the purposes of the definition of “prescribed amount” in section 9E(1) is \$56 250.

2. Prescribed amounts for 1997-98 onwards for s. 11A and 16J

For the purposes of sections 11A(2e) and 16J(6), the amount shall be calculated for the purposes of the financial year commencing on 1 July 1997 and every succeeding financial year in accordance with the following formula —

$$\frac{A}{A+B} \left[\frac{675\,000\,C}{D} - \frac{1}{3} \left\{ A+B - \frac{675\,000\,C}{D} \right\} \right]$$

Where:

A = Taxable wages paid or payable during the financial year by an employer, or in the case of a group, by the members of that group.

B = Interstate wages paid or payable during the financial year by an employer, or in the case of a group, by the members of that group.

C = Number of days during the financial year in which wages were paid or payable by an employer, or in the case of a group, by the members of that group.

D = Number of days in the financial year.

3. Prescribed amount for s. 12

The amount per week prescribed for the purposes of section 12 is \$12 981.

[Schedule 1 inserted by No. 13 of 1997⁹ s. 17.]

Schedule 2 — Provisions about superannuation

[Section 3A]

1. Definitions and general provisions about superannuation

(1) In this Schedule and section 3A —

“**actuary**” means a Fellow or an Accredited Member of the Institute of Actuaries of Australia;

“**Australian superannuation scheme**” means a superannuation scheme that —

- (a) was established in Australia or has any asset that is situated in Australia; and
- (b) has its central management and control in Australia;

“**defined benefit**” means a benefit under a superannuation scheme that is defined, wholly or in part, by reference to either or both of —

- (a) the amount of the participant’s salary —
 - (i) at a particular date, being the date of the termination of the participant’s employment, the date of the participant’s retirement, or an earlier date; or
 - (ii) averaged over a period ending on any such date;and
- (b) a stated amount;

“**individual superannuation guarantee shortfall**” has the same meaning as it has in the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

“**participant**” means a person in respect of whom the scheme provides for benefits that are, or are to be, funded to any extent by the employer’s contributions;

“**regulated superannuation fund**” has the same meaning as it has in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

“**superannuation fund**” means any fund carried on —

- (a) for the purposes of a superannuation scheme; or

(b) to provide retirement savings accounts (as defined in the *Retirement Savings Accounts Act 1997* of the Commonwealth),

and includes the Superannuation Holding Accounts Reserve established by the *Small Superannuation Accounts Act 1995* of the Commonwealth;

“superannuation guarantee charge” means a charge imposed by the *Superannuation Guarantee Charge Act 1992* of the Commonwealth except that it does not include additional superannuation guarantee charge under Part 7 of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

“superannuation scheme” includes a provident or retirement fund or scheme;

“unfunded public sector scheme” means a public sector superannuation scheme (within the meaning given to that term by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth) other than one that is funded in advance in accordance with actuarial advice at a level that is reasonably expected by the actuary to be adequate to provide for present and prospective liabilities in respect of benefits under the scheme.

- (2) Setting aside any money or anything that is worth money as, or as part of, a superannuation fund is deemed, for the purposes of this Schedule and section 3A, to be paying it as a contribution to the superannuation fund.
- (3) Making a contribution to a superannuation fund of anything that is worth money is deemed, for the purposes of this Schedule and section 3A, to be paying a contribution of the amount of money that it is worth, and section 3(2aa) applies to how that amount is to be worked out as if that provision referred to that contribution instead of taxable wages.
- (4) If an amount by way of administration or other charges in respect of the carrying on of a superannuation fund is paid other than to the fund, the amount is deemed, for the purposes of this Schedule and section 3A, to be paid as a contribution to the fund.
- (5) If, in a return period, a person becomes obliged to, but fails to, do anything that, if it were done, would be deemed by subclause (2), (3),

Schedule 2 Provisions about superannuation

or (4) to be paying a contribution to a superannuation fund, the contribution to the superannuation fund is deemed to be payable in the return period.

- (6) A contribution to a superannuation fund paid or payable on behalf of an employer is deemed, for the purposes of this Schedule and section 3A, to be paid or payable by the employer.
- (7) Contributions to a superannuation fund that are deemed by different provisions of this Schedule to be paid or payable by an employer are cumulative upon one another, and on contributions that are actually paid or payable, unless it is otherwise provided.

2. Australian scheme that is unregulated defined benefit scheme or unfunded public sector defined benefit scheme

- (1) This clause applies if an Australian superannuation scheme operates that —
 - (a) is not a regulated superannuation fund; or
 - (b) is an unfunded public sector scheme (whether or not a regulated superannuation fund),

and it provides for an employer to contribute and provides for any defined benefit in respect of any person, whether or not it also provides for any benefit that is not a defined benefit.

- (2) A contribution is deemed, for the purposes of section 3A(1), to be payable by the employer to the superannuation fund concerned, in the return period, in respect of each participant.
- (3) The amount of the contribution in respect of a participant is the amount that an actuary determines would be sufficient, together with earnings on the amount, to fully provide for the cost to the employer of the entitlement accruing under the scheme to benefits in respect of services performed or rendered by the participant in the return period.
- (4) The regulations may include provisions about how an actuary is to determine an amount under subclause (3).
- (5) If a contribution by an employer under a scheme is deemed by subclause (2) to be payable to the superannuation fund concerned, no other contribution by the employer to the fund under the scheme is deemed by section 3A(1) to be a superannuation benefit unless —

- (a) it is a contribution that the employer is deemed by clause 4 to pay; or
- (b) the contribution is made for any reason other than to make provision for the cost described in subclause (3).

3. Unfunded credit to unregulated Australian scheme that gives no defined benefit

- (1) This clause applies if an Australian superannuation scheme operates that —
 - (a) is not a regulated superannuation fund; and
 - (b) does not provide for any defined benefit in respect of any person,

and under the scheme any amount not excluded by subclause (3) is credited in a return period as an employer's contribution in respect of a person.

- (2) An amount that a person is obliged to, but does not, credit in a return period is deemed for the purposes of this clause to be credited in the return period and not at any other time.
- (3) An amount —
 - (a) paid or payable as a contribution under the scheme; or
 - (b) deemed, other than by subclause (4), to be paid or payable as a contribution under the scheme for the purposes of section 3A,

is excluded from the amount mentioned in subclause (1).

- (4) A contribution of the amount mentioned in subclause (1) is deemed, for the purposes of section 3A(1), to be payable by the employer to the superannuation fund concerned, in the return period, in respect of each participant.
- (5) If an amount credited as an employer's contribution under a scheme is deemed by subclause (4) to be payable to the fund concerned, no contribution paid under the scheme is deemed to be a superannuation benefit by section 3A(1) to the extent that it is paid to meet or partly meet an obligation arising from the credit.

Schedule 2 Provisions about superannuation

4. Superannuation guarantee charge

- (1) If any superannuation guarantee charge payable by an employer is imposed in a return period, a contribution of the amount of the charge is deemed, for the purposes of section 3A(1), to be payable by the employer to a superannuation fund in the return period.
- (2) If the charge is imposed because of only one individual superannuation guarantee shortfall, the contribution is deemed to be in respect of the person in respect of whom the employer has the shortfall.
- (3) If the charge is imposed because of an individual superannuation guarantee shortfall in respect of each of 2 or more persons, the contribution is deemed to be in respect of them, apportioned according to the amount of the employer's individual superannuation guarantee shortfall in respect of each of them.
- (4) If —
 - (a) a contribution that was payable, but the employer failed to pay, in respect of a person is deemed to be a superannuation benefit by section 3A(1); and
 - (b) the charge is imposed wholly or in part because of an individual superannuation guarantee shortfall that results wholly or in part from the failure,

the amount of the contribution that is deemed by this clause to be payable in respect of the person is reduced by the amount of the contribution described in paragraph (a).

- (5) Subclause (4) cannot reduce an amount to below 0.

5. Treatment of certain contributions

- (1) A contribution in respect of services performed or rendered before 1 July 1997 is not deemed to be a superannuation benefit by section 3A(1).
- (2) If a contribution is partly in respect of services performed or rendered before 1 July 1997, the part that is in respect of services performed or rendered before 1 July 1997 is not deemed to be a superannuation benefit by section 3A(1).

- (3) For the purposes of this clause, a contribution is in respect of services performed or rendered before 1 July 1997 if, or to the extent that, the payment of the contribution is attributable, or is to satisfy any benefit attributable, to a period of service before 1 July 1997.
- (4) If there is no sufficient provision in this Act for dealing with —
- (a) whether, or the extent to which, a contribution is paid or payable to a superannuation fund in respect of a particular person;
 - (b) whether, or the extent to which, the payment of a contribution to a superannuation fund is attributable, or is to satisfy any benefit attributable, to a period of service before 1 July 1997; or
 - (c) where a contribution is paid or payable to a superannuation fund,

regulations may be made as to all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

[Schedule 2 inserted by No. 13 of 1997 s. 18.]



Notes

- ¹ This reprint is a compilation as at 4 October 2002 of the *Pay-roll Tax Assessment Act 1971* and includes the amendments made by the other written laws referred to in the following table. This table also contains information about any previous reprint ¹².

Compilation table

Short title	Number and year	Assent	Commencement
<i>Pay-roll Tax Assessment Act 1971</i>	10 of 1971	30 Sep 1971	30 Sep 1971
<i>Pay-roll Tax Assessment Act Amendment Act 1973</i>	54 of 1973	6 Nov 1973	1 Sep 1973 (see s. 2)
<i>Pay-roll Tax Assessment Act Amendment Act 1975</i>	109 of 1975	1 Dec 1975	s. 5: 1 Sep 1971 (see s. 2(2)); balance: 1 Jan 1976 (see s. 2(1))
<i>Pay-roll Tax Assessment Act Amendment Act 1976</i> ¹⁰	106 of 1976	17 Nov 1976	1 Jan 1977 (see s. 2)
<i>Pay-roll Tax Assessment Act Amendment Act 1977</i> ¹⁰	22 of 1977	27 Oct 1977	1 Dec 1977 (see s. 2)
Reprint of the <i>Pay-roll Tax Assessment Act 1971</i> approved 15 Dec 1978 (includes amendments listed above)			
<i>Pay-roll Tax Assessment Act Amendment Act 1979</i> ¹⁰	40 of 1979	25 Oct 1979	1 Jan 1980 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act 1981</i>	80 of 1981	9 Nov 1981	1 Jan 1982 (see s. 2)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Pay-roll Tax Assessment Amendment Act 1982</i> ¹⁰	128 of 1982	10 Dec 1982	1 Jan 1983 (see s. 2)
Reprint of the <i>Pay-roll Tax Assessment Act 1971</i> approved 9 May 1983 (includes amendments listed above)			
<i>Pay-roll Tax Assessment Amendment Act 1983</i> ¹⁰	25 of 1983	1 Dec 1983	1 Jan 1984 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act 1984</i>	33 of 1984	20 Jun 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 29 Jun 1984 p. 1753)

Short title	Number and year	Assent	Commencement
<i>Pay-roll Tax Assessment Amendment Act (No. 2) 1984</i> ¹⁰	97 of 1984	7 Dec 1984	1 Jan 1985 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act 1985</i> ¹⁰	83 of 1985	4 Dec 1985	s. 5: 1 Nov 1985 (see s. 2(2) and <i>Gazette</i> 17 Jan 1986 p. 181); s. 4, 6, 7 and 8: 1 Jan 1986 (see s. 2(3)); balance: 4 Dec 1995 (see s. 2(1))
<i>Pay-roll Tax Assessment Amendment Act 1986</i> ⁷	29 of 1986	29 Jul 1986	29 Jul 1986 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act (No. 2) 1986</i> ¹⁰	31 of 1986	29 Jul 1986	1 Aug 1986 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act (No. 3) 1986</i> ¹⁰	67 of 1986	28 Nov 1986	1 Jun 1986 (see s. 2 and s. 6)
<i>Pay-roll Tax Assessment Amendment Act 1987</i> ¹⁰	96 of 1987	16 Dec 1987	s. 6: 1 Jul 1987 (see s. 2(2)); balance: 1 Jan 1988 (see s. 2(1))
Reprint of the <i>Pay-roll Tax Assessment Act 1971</i> as at 1 Jun 1988 (includes amendments listed above)			
<i>Pay-roll Tax Assessment Amendment Act 1988</i> ¹⁰	29 of 1988	24 Nov 1988	1 Jan 1989 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act (No. 2) 1988</i>	30 of 1988	24 Nov 1988	s. 7(1)(a): 19 Jan 1988 (see s. 7(2)(a)); s. 7(1)(b): 1 Jun 1988 (see s. 7(2)(b)); s. 7(1)(c): 16 Mar 1988 (see s. 7(2)(c)); balance: 22 Dec 1988
<i>Pay-roll Tax Assessment Amendment Act 1989</i> ¹⁰	8 of 1989	13 Nov 1989	1 Nov 1989 (see s. 2)
<i>Taxation (Reciprocal Powers) Act 1989</i> s. 16	18 of 1989	1 Dec 1989	5 Oct 1990 (see s. 2 and <i>Gazette</i> 5 Oct 1990 p. 5122)
<i>Pay-roll Tax Assessment Amendment Act 1990</i> ¹⁰	54 of 1990	17 Dec 1990	s. 5(a) and (c): 1 Jan 1991 (see s. 2(2)); balance: 17 Dec 1990 (see s. 2(1))

Pay-roll Tax Assessment Act 1971

Short title	Number and year	Assent	Commencement
<i>Pay-roll Tax Assessment Amendment Act 1992</i> ¹⁰	7 of 1992	16 Jun 1992	1 Jun 1992 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act (No. 2) 1992</i> ¹⁰	65 of 1992	11 Dec 1992	1 Dec 1992 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Pay-roll Tax Assessment Amendment Act 1993</i> ¹⁰	22 of 1993	9 Dec 1993	s. 4(a) and 9: 1 Jan 1994 (see s. 2(2)); s. 4(b) and 10: 1 Jan 1994 (see s. 2(3) and <i>Gazette</i> 24 Dec 1993 p. 6795); balance: 9 Dec 1993 (see s. 2(1))
<i>Acts Amendment (Ministry of Justice) Act 1993</i> Pt. 14 ¹¹	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act 1994</i> ¹⁰	41 of 1994	26 Aug 1994	1 Jul 1994 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act 1995</i> ¹⁰	8 of 1995	7 Jun 1995	1 Jul 1995 (see s. 2)
<i>Pay-roll Tax Assessment Amendment Act (No. 2) 1995</i> ¹⁰	36 of 1995	24 Oct 1995	1 Jul 1995 (see s. 2)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Revenue Laws Amendment (Assessment) Act 1996</i> Pt. 4 ^{10, 13}	20 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2(2))
Reprint of the <i>Pay-roll Tax Assessment Act 1971</i> as at 12 Nov 1996 (includes amendments listed above)			
<i>Revenue Laws Amendment (Assessment) Act 1997</i> Pt. 3 ^{3, 5, 6, 8, 9, 14}	13 of 1997	25 Jun 1997	1 Jul 1997 (see s. 2(2))

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 58 and 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act 1998</i> Pt. 7	22 of 1998	30 Jun 1998	30 Jun 1998 (see s. 2)
<i>Financial Relations Agreement (Consequential Provisions) Act 1999</i> Pt. 4	53 of 1999	13 Dec 1999	13 Dec 1999 (see s. 2(1))
<i>Revenue Laws Amendment (Assessment) Act 2001</i> Pt. 2 and s. 24	3 of 2001	26 Jun 2001	Pt. 2: 1 Jul 2001 (see s. 2(2)); s. 24: 30 Jun 2001 (see s. 2(4))
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 43	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Revenue Laws Amendment (Assessment) Act (No. 2) 2001</i> Pt. 3 and 4 ⁴	36 of 2001	7 Jan 2002	Pt. 3: 1 Jan 2002 (see s. 2(2)); Pt. 4: 7 Jan 2002 (see s. 2(1))

² Under the *Alteration of Statutory Designations Order (No. 2) 1996* a reference in any law to the Commissioner of State Taxation is read and construed as a reference to the Commissioner of State Revenue.

³ The *Revenue Laws Amendment (Assessment) Act 1997* s. 19 reads as follows:

“

19. Contributions prepaid before this Part commences

- (1) If the Commissioner considers that anything has been done on 10 April 1997, or after that day but before 1 July 1997, that amounts to a prepayment of contributions referred to in section 3A of the principal Act (as amended by this Act), the Commissioner may determine that, for the purposes of that Act, it is to be treated as having been done on 1 July 1997, and that Act applies accordingly.
- (2) Anything done on 10 April 1997, or after that day but before 1 July 1997, amounts to a prepayment of contributions if, had it been done on 1 July 1997, it would have resulted in an amount being deemed to be a superannuation benefit by section 3A(1) of the principal Act as amended by this Act (keeping in mind clause 5 of Schedule 2 to that Act).

”

⁴ The *Revenue Laws Amendment (Assessment) Act (No. 2) 2001* s. 9 reads as follows:

“

9. Fringe benefits provided before 1 January 2002

Without limiting the operation of the *Interpretation Act 1984*, section 3C of the *Pay-roll Tax Assessment Act 1971* as in force immediately before 1 January 2002 continues to have effect in relation to fringe benefits provided (within the meaning given by that Act) before 1 January 2002.

”

⁵ The *Revenue Laws Amendment (Assessment) Act 1997* s. 12(2) reads as follows:

“

- (2) It does not matter for the purposes of section 6(1a) as inserted in the principal Act by subsection (1) whether or not the period of 6 months referred to in section 6(1a) began before the commencement of this section.

”

⁶ The *Revenue Laws Amendment (Assessment) Act 1997* s. 13(5) reads as follows:

“

- (5) Without limiting the operation of the *Interpretation Act 1984*, any declaration made or condition imposed under section 10(3) of the principal Act as in force immediately before the commencement of this section continues to have effect as if it were a declaration made or condition imposed under section 10(3) of the principal Act as amended by this Act, and the declaration and condition may be amended or revoked by the Commissioner accordingly.

”

⁷ The *Pay-roll Tax Assessment Amendment Act 1986* s. 6(2) reads as follows:

“

- (2) Section 34(3) as inserted in the principal Act by subsection (1) shall have effect only in respect of objections made, appeals brought and cases stated after the commencement of this section.

”

⁸ The *Revenue Laws Amendment (Assessment) Act 1997* s. 16(2) reads as follows:

“

- (2) Regulations —
- (a) which are made under the principal Act as amended by this Act; and
 - (b) which are so made within 6 months after the coming into operation of this section,
- may come into operation at a time specified in those regulations that is not earlier than 1 July 1997.

”

⁹ The *Revenue Laws Amendment (Assessment) Act 1997* s. 17(2) reads as follows:

“

- (2) Without limiting the operation of the *Interpretation Act 1984* —
- (a) clauses 1 and 4 of Schedule 1 to the principal Act as in force immediately before the commencement of this section continue to have effect with respect to months or other periods before July 1997; and
 - (b) clause 3 of Schedule 1 to the principal Act as in force immediately before the commencement of this section continues to have effect with respect to the financial year that commenced on 1 July 1996.

”

¹⁰ Each of these amendment Acts included a savings provision that applied with respect to wages paid or payable, in periods before or in the financial year during which, the amendments came into operation.

¹¹ The *Acts Amendment (Ministry of Justice) Act 1993* s. 68 reads as follows:

“

68. Savings

If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

”

¹² The *Acts Amendment (Public Sector Management) Act 1994*, s. 19 purported to amend Schedule 2 of the *Pay-roll Tax Assessment Act 1971* by repealing item 30. However, that amendment has no effect as Schedule 2 was repealed by the *Pay-roll Tax Assessment Amendment Act 1993* s. 10.

¹³ The *Revenue Laws Amendment (Assessment) Act 1996* s. 12(3) and (4) reads as follows:

“

(3) Notwithstanding section 19(2) of the principal Act, where the Commissioner finds that tax has been overpaid on wages paid or payable on or after 1 January 1994 and before the coming into operation of this section that are exempt under section 10(1)(la) of the principal Act as amended by this Act, the Commissioner shall refund to the employer who paid the tax the amount of tax found to be overpaid.

(4) Regulations made under section 10(1)(n) of the principal Act as amended by this Act not later than 3 months after the coming into operation of this section may take effect from a time specified in the regulations that is not earlier than 1 July 1996.

”

¹⁴ The *Revenue Laws Amendment (Assessment) Act 1997* s. 8 reads as follows:

“

8. Application

The amendments to the principal Act set out in this Part apply to and in relation to wages paid or payable on and after 1 July 1997.

”

¹⁵ Under the *Alteration of Statutory Designations Order (No. 3) 2001* a reference in any law to the State Taxation Department is read and construed as a reference to the Department of Treasury and Finance.

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
actuary.....	Sch. 2 cl. 1(1)
agent.....	3(1)
annual amount of pay-roll tax	11B(1)
approved.....	3(1)
Australia.....	3(1)
Australian superannuation scheme.....	Sch. 2 cl. 1(1)
business	16A
charitable body or organization.....	10(3a)
Commissioner	3(1)
Commonwealth Act	3(1)
company.....	3(1)
consideration	3D(2)
controlling interest	16E(3)
corporation	3(1)
Corporations Act.....	3(1)
corresponding law	3(1)
defined benefit	Sch. 2 cl. 1(1)
designated group employer	3(1)
employer	3(1), 32(6), 33(5)
employment agent.....	3(2a)
FBTA Act	3(1)
financial year.....	3(1), 11(1), 11A(1a)
foreign wages.....	3(1)
fringe benefit.....	3(1)
group	3(1)
GST.....	3D(2)
individual superannuation guarantee shortfall	Sch. 2 cl. 1(1)
interstate wages.....	3(1), 9E(1), 11A(1)
liquidator.....	3(1)
month	3(1)
otherwise deductible	3C(4)
participant	Sch. 2 cl. 1(1)
pay-roll tax	3(1)
person.....	3(1)
prescribed amount.....	9E(1), 11A(2e)
prescribed benefit.....	3(1)
prescribed period.....	11C(1), 16L(2)
provided	3B(1)

Defined Terms

regulated superannuation fund	Sch. 2 cl. 1(1)
relevant Minister	10(5)
relevant proportion.....	3D(2)
remote location.....	10(5)
return period.....	3(1)
State	3(1)
Superannuation fund	Sch. 2 cl. 1(1)
superannuation guarantee charge	Sch. 2 cl. 1(1)
superannuation scheme	Sch. 2 cl. 1(1)
tax	3(1), 31(6)
taxable wages.....	3(1), 9E(1), 11A(1)
total amount of pay-roll tax.....	11C(1)
trustee.....	3(1)
unfunded public sector scheme	Sch. 2 cl. 1(1)
voting share.....	3(1)
wages	3(1), 11C(1)