

**2004**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**PAYROLL TAX AMENDMENT BILL 2004**

**EXPLANATORY STATEMENT**

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## **Payroll Tax Amendment Bill 2004**

### **Summary**

The *Payroll Tax Amendment Bill 2004* (the Bill) amends the *Payroll Tax Act 1987* (Payroll Tax Act) to provide an exemption from payroll tax.

This exemption is designed to provide employers with an incentive to provide maternity, adoption and primary carer leave for their ACT employees, similar to that of the ACT public sector's current leave arrangements.

The provisions in the Bill are similar to an existing payroll tax exemption offered in Victoria which covers maternity leave and adoption leave. However, the ACT's exemption expands on the Victorian exemption to include primary carer leave.

### **Overview**

The amendments to the Payroll Tax Act introduce a payroll tax exemption for wages paid or payable by employers who provide paid maternity, adoption and/or primary carer leave (limited to caring for a new born or an adopted child) to ACT employees. This includes wages paid or payable for full-time and part-time employees and is for a maximum of 14 weeks.

As payroll tax is assessed annually, the Bill commences at the beginning of a financial year to avoid disruption, complication and unnecessary costs for both employers and the Government. In addition, the Bill does not commence until 1 July 2005 which gives employers sufficient time to consider altering their existing leave conditions to utilise this exemption and make any necessary amendments to their payroll systems and training programs.

### **Financial Implications**

It is anticipated that the exemption in this Bill will cost approximately \$150,000 per annum in revenue forgone from 2005-06 onwards.

Details of the Bill are attached.



## **Details of the Payroll Tax Amendment Bill 2004**

### **Clause 1      Name of Act**

This Act is the *Payroll Tax Amendment Act 2004*.

### **Clause 2      Commencement**

This Act commences on 1 July 2005.

### **Clause 3      Legislation amended**

This Act amends the *Payroll Tax Act 1987*.

### **Clause 4      New section 9B Exemption from tax – maternity, adoption and primary carer leave is inserted**

Section 9B (1) ensures that wages paid or payable to an employee for *maternity leave*, *adoption leave* or *primary carer leave* are not liable for payroll tax under section 6 of the *Payroll Tax Act 1987*.

Section 9B (2) specifies that this exemption for payroll tax liability only applies to wages paid or payable for a maximum of 14 weeks and only in relation to a pregnancy, birth or adoption. It also stipulates that the leave can only be taken before the *relevant day*, which is 6 months after the birth or placement of the child in the care of their adoptive parent. This leave is only exempt from payroll tax if the employee has given their employer any documentation required under section 9B (4) of the Bill.

Section 9B (3) specifies that the 14 weeks maximum leave mentioned in subsection (2) (a) relates to the equivalent to 14 weeks leave on full pay or at the part time rate of pay consistent with the employee's employment. The birth or adoption of more than one child at one time is classed as one birth or adoption for the purposes of the Bill (for example twins). Should more than one pregnancy or adoption occur on separate occasions then they are to be treated as individual cases of leave.

Section 9B (4) provides definitions for the new section 9B. It states that leave approved as *adoption leave*, *maternity leave* and *primary carer leave* must be for the purpose of adoption, pregnancy or caring for a newly born or adopted child, respectively. This leave cannot be in any other form (ie sick leave, annual leave or long service leave) or for any other purpose. If the employer does not offer paid *adoption leave*, *maternity leave* or *primary carer leave* then they are not eligible for this exemption.

*Adoption leave* is for the specific purpose of preparing or caring for the adoption of a child by the employee. This leave can be taken before or after the child has been placed in their care, or a combination of both. The exemption ceases if the child is removed from their care and/or the adoption falls through.

Maternity leave is for the specific purpose of women preparing or caring for their newly born child. This leave can be taken during the pregnancy or after the birth, or a

combination of both. The exemption applies to wages paid whilst utilising the leave even if the mother miscarries or the child is stillborn.

*Primary carer leave* is for the specific purpose of preparing or caring for a newly born or adopted child. The leave applies to employees who are not eligible under *maternity leave* or *adoption leave* (ie not the woman who gave birth to child or the adoptive parent). Primary Carers are eligible for this leave if they can provide proof that they are the primary carer for the child. Some examples of primary carers are grandparents, the parent of the child or domestic partner of the parent of the child.

There is nothing in the Bill that prevents more than one person from being on leave at the same time for the same child, as long as their employer/s have given approval for their individual leave and the employee has provided the *required document*.

The *relevant day*, or maximum time frame for utilising this exemption for *adoption leave*, *maternity leave* or *primary carer leave*, is six months after the birth, end of the pregnancy or the placement of the child in the care of the adoptive parent, whichever is applicable.

An employer who has granted an employee's *adoption leave*, *maternity leave* or *primary carer leave* has to collect documentation (*required document*) which proves that the employer was eligible to receive an exemption from payroll tax. Employers, with their employee's permission, can contact the Adoption Unit of the Family Services Branch of the Office for Children, Youth and Family Support to confirm that a child was placed in their employee's care and whether an adoption order was made.

Employees on *maternity leave* need to provide their employer with a birth certificate, or a medical certificate stating that they were pregnant and the date the pregnancy ended. The latter is designed to cover situations where the pregnancy did not result in a live birth.

For *adoption leave*, employees need to provide their employer with a statutory declaration stating that the child had been placed for the purpose of adoption in their care.

The *required document* for *primary carer leave* varies depending on who is being cared for. When caring for a newly born child, a birth certificate and a statutory declaration stating that the employee is the primary carer of the child are required. If the child being cared for is adopted, a statutory declaration stating that the child has been placed in the care of the adoptive parent pending an adoption is required. In addition, statutory declarations stating the date of the placement and that the employee is the primary carer of the child are required as evidence for cases where the child was adopted.

Any documentation an employee gives to their employer as proof of their eligibility for the leave must be kept by the employer for at least five years and produced if requested by the Commissioner for ACT Revenue.