

**2007**

**The Legislative Assembly for  
Australian Capital Territory**

**Payroll Tax Amendment Bill 2007**

**Explanatory Statement**

**Circulated by authority of  
Treasurer  
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# Payroll Tax Amendment Bill 2007

## Summary

This Bill amends the *Payroll Tax Act 1987* (the Payroll Tax Act) and makes consequential amendments to the *Taxation Administration Act 1999* (the Taxation Administration Act).

## Background

In a National payroll tax harmonisation project, all States and Territories agreed to make certain aspects of payroll tax administration (excluding rates and thresholds) more consistent across jurisdictions. The Project aims to reduce compliance costs for businesses that operate across State and Territory borders. Following the States Only Ministerial Council Meeting held on 29 March 2007, a joint press release signed by all State and Territory Treasurers indicated that these measures are to be in place by 1 July 2008.

## Overview

### Amendments to the *Payroll Tax Act 1987*

This Bill implements five measures where the ACT did not previously comply with the agreed outcomes of the National Project, and is consistent in these areas with the NSW and Victorian harmonised Payroll Tax Acts introduced on 1 July 2007.

#### Exemption for Wages Paid in the ACT for Services Performed in Another Country.

The Bill adopts an exemption, which is new to the ACT, for wages paid in the ACT for employees who work in another country for a continuous period of six months or more.

#### Motor Vehicle and Accommodation Allowance Exemptions.

The Bill adopts exemption rates for motor vehicle allowances and accommodation allowances linked with those set annually by the Australian Taxation Office for income tax deduction purposes. The motor vehicle allowance exemption will be linked to the 'large car' rate, and the value of the accommodation allowance exemption will be linked to the 'lowest salary band/lowest capital city' rate. Exemptions in the ACT for allowances were previously dealt with administratively.

#### Fringe Benefits.

The Bill adopts a single gross up factor (Type 2) for the purposes of calculating the amount to be taken as wages for payroll tax purposes, of benefits that attract a Fringe Benefits Tax liability. Previously, the ACT used both Type 1 and Type 2 factors

#### Grouping Provisions.

The Bill adopts the NSW/Victorian grouping provisions as a model, thus tightening the previous ACT provisions. The provisions adopted are in relation to commonly controlled companies, tracing provisions, Commissioner's discretion to exclude a member from a group where they operate independently, a common test for inter-used employees, and a designated group employer to claim the appropriate tax-free threshold for the entire group. The new grouping provisions have been incorporated into the Payroll Tax Act rather than the Taxation Administration Act.

The Commissioner's discretion to exclude an employer from a payroll tax group has been expanded to allow the exclusion of any member of the group, except related corporations.

The adoption of a designated group employer is new to the ACT, and requires grouped employers to nominate one employer (the designated group employer) to obtain the benefit of the payroll tax-free threshold for the group. All other members of the group pay payroll tax at the flat rate.

Employee Share Acquisition Schemes.

Employee Share Acquisition Schemes already fall into the payroll tax net in the ACT and capture all shares and options, regardless of where the company is registered. From the commencement of this Bill, shares and options will be regarded as being paid or payable in and outside the ACT, based on whether the company is registered in or outside the ACT.

Transitional provisions.

Transitional provisions ensure that the Payroll Tax Act and the Taxation Administration Act, as in force before the commencement of these amendments, will continue to apply to a liability incurred up to the commencement of the amendments. This will apply even if the liability is not discovered until after the commencement of the amendments. This provision will expire 5 years after commencement.

**Amendments to the *Taxation Administration Act 1999***

This Bill includes the grouping provisions in the Payroll Tax Act, making the Taxation Administration Act grouping provisions, and some related provisions, redundant.

**Financial Implications of this Bill**

There may be a small overall negative impact on payroll tax revenue as a result of increased exemptions for allowances, but this will be offset to some extent by tighter grouping provisions. The benefits to taxpayers of adopting these measures are likely to outweigh any such impact.



## **Details of the Payroll Tax Amendment Bill 2007**

### **Clause 1 - Name of Act**

This Act is the *Payroll Tax Amendment Act 2007*.

### **Clause 2 – Commencement**

This Act commences on a day fixed by the Minister by written notice.

### **Clause 3 – Legislation amended**

This Act amends the *Payroll Tax Act 1987* and the *Taxation Administration Act 1999*.

### **Clause 4 – Dictionary Section 1A, note 1**

This clause substitutes a new example for a signpost definition.

### **Clause 5 – New part and division heading**

Clause 5 inserts a new **Part 1A, Important concepts**, and **Division 1A.1 Wages**, after section 1B. This allows for a new structure to clearly separate wages, benefits, allowances and grouping of employers into divisions.

### **Clause 6 – New sections 2BA and 2BB**

**Section 2BA Place where wages payable** provides that wages constituted by the grant of a share or option will be taken to be paid or payable in the ACT if the share is a share in a company registered in the ACT or any other body corporate incorporated under a Territory law. The note makes it clear that if the wages are taken to be paid or payable outside the ACT, the grant of a share or option may still be liable to payroll tax in the ACT (under section 2D (1) of the Act) if the grant is made for services performed wholly or mainly in the ACT.

**Section 2BB Inclusion of wages paid by group employers** provides that a reference in the Bill to wages paid or payable by a member of a group includes wages that would be taken to be paid or payable by a member of the group if the member were the employer of the employee to whom the wages were paid.

### **Clause 7 – Wages to which this Act applies**

**Section 2D (1) (a)** is substituted and wages to which this Act applies are wages that are paid or payable by an employer for services performed, and that are paid or payable in the ACT (except if the relevant services are performed wholly in one other State or Territory) or paid or payable outside the ACT for services performed wholly in the ACT.

Subparagraph (a) (ii) provides a new exemption and taxable wages do not include wages paid or payable in respect of services which are performed wholly in another country for a continuous period of more than 6 months. Such wages are exempt from tax from the commencement of the period of overseas service.

### **Clauses 8 and 9 – Section 2D (1) (b) and Section 2D (2) (a), (b) (i) and (c)**

For consistency with the rest of the Act, these clauses omit references to the words ‘or rendered’. So there is no doubt, *perform*, in the Dictionary, is defined so as to include ‘render’.

**Clause 10 – Section 3** is substituted. Clause 10 substitutes new sections that deal separately with the meaning and value of benefits and inserts a new division for allowances, and new divisions and subdivisions dealing with grouping of employers.

### **Division 1A.2 Benefits**

**Section 3 Meaning of benefit** - is unchanged from the previous provision.

**Section 3A Value of benefit** inserts a new provision and 3A (1) has a formula for calculating the value of a fringe benefit for payroll tax purposes. This value is the

taxable value of the fringe benefit grossed up using the formula for "Type 2 benefits" specified in the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth. Previously fringe benefits were grossed up using the "Type 1 benefits" formula or the "Type 2 benefits" formula accordingly.

3A (2) and (3) specify the bases on which fringe benefits are to be included in monthly returns for payroll tax purposes. An employer must include the actual monthly value of the fringe benefits determined under paragraph (1) unless the employer has made an election under section 3B, and that election is still in force.

**Section 3B Employer election for taxable value of benefits**, permits employers to elect to declare  $\frac{1}{12}$ th of the ACT aggregate fringe benefits amount (grossed up using the formula for "Type 2 benefits") included in a preceding annual FBT return. This provides a method for reconciling these monthly amounts at the end of the financial year with the current year's FBT return. An election, once made, may only be terminated with the approval of the Commissioner. The clause also specifies the basis on which a final adjustment of payroll tax is to be effected by an employer who ceases to be liable to payroll tax.

**Division 1A.3 Allowances as wages** - new heading inserted.

**Section 3C Wages to which this Act applies – exempt component of motor vehicle allowances not included** provides that wages do not include the exempt component of a motor vehicle allowance, calculated in accordance with this provision. An employer need only pay payroll tax on the amount of the motor vehicle allowance that exceeds the exempt component. The exempt component is a function of the number of business kilometres travelled during the financial year and the exempt rate, being a rate determined by the Minister by Notifiable Instrument, or if no such rate is determined, the rate prescribed under the *Income Tax Assessment Act 1997* of the Commonwealth.

The method for determining the number of business kilometres travelled is determined in accordance with Schedule 2 of the *Payroll Tax Act 1987*, Motor Vehicle Allowances. The commissioner may approve another method of determining the number of business kilometres travelled, and if so, the employer must use that method.

**Section 3D Wages to which this Act applies – accommodation allowances not included** provides that wages only include an accommodation allowance paid or payable to an employee for a night's absence from his or her usual place of residence to the extent that it exceeds the exempt rate.

The exempt rate is determined by the Minister (by Notifiable Instrument) or if no such rate is determined, the exempt rate is by reference to Australian Taxation Office determinations in respect of reasonable daily travel allowance expenses.

**Division 1A.4 Grouping of employers** - new heading inserted.

**Subdivision 1A.4.1 Interpretation** - new heading inserted.

**Section 3E Definitions – div 1A-4** provides definitions of *associated person*, *business*, *entity*, *group*, *private company* and *related person* for the purposes of this division.

**Section 3F Grouping provisions to operate independently** provides that the fact that a person is not a member of a group constituted under one of the grouping provisions does not prevent them from being a member of a group constituted under any of the other grouping provisions.

**Subdivision 1A.4.2 Business groups** - new heading inserted.

**Section 3G Make up of groups** ensures that when two or more groups form part of a larger group, the two or more smaller groups are not considered as groups in their own right.

**Section 3H Groups of corporations** provides that corporations constitute a group if they are related bodies corporate within the meaning of the Corporations Act. The Commissioner has no discretion to exclude such corporations from a group constituted under this provision.

**Section 3I Groups arising from the use of common employees** provides for groups arising from the inter-use of employees. Where one or more employees of an employer

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

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

**Section 3J Groups of commonly controlled businesses** provides for groups arising through common control of 2 businesses. Under this clause, a group exists where a person, or a set of persons, has a controlling interest in each of 2 businesses. The entities carrying on the businesses are grouped.

The rules for determining whether a person (or set of persons) has a controlling interest in a business vary depending upon the type of entity conducting the business (eg a corporation, partnership or trust), and generally relate to the level of ownership or control of the business, or of the entity conducting the business. The level of ownership or control required for an interest to be a controlling interest is "more than 50%", and there is no change from the provisions in Division 11.1 of the *Taxation Administration Act 1999* (omitted by Schedule 1 of this Bill).

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

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

**Section 3K Groups arising from tracing interests in corporations** provides for groups arising from the tracing of interests in a corporation. An entity (being a person or 2 or more associated persons) and a corporation form part of a group if the entity has a controlling interest in the corporation. Such a controlling interest exists if the entity has a direct interest, an indirect interest, or an aggregate interest in the corporation, and the value of that interest exceeds 50%. Subdivision 1A.4.3 applies in making this determination.

Definitions of *associated person*, *related person*, *entity* and *private company* are also provided for this section. The *Legislation Act 2001* section 169 provides definitions of *domestic partner* and *domestic relationship*.

**Section 3L Smaller groups included in larger groups** provides that, where any person is a member of 2 or more groups, those groups will form a single group. Under section 3G, the smaller groups which have been subsumed cease to exist as groups for the purposes of the legislation.

**Subdivision 1A.4.3 Business groups – tracing of interests** - new heading inserted. This Subdivision provides that an entity's interest in a corporation for the purpose of determining whether the entity has a controlling interest, may be a direct or an indirect interest. Indirect interests may be traced through interposed entities, and may be aggregated with direct interests for the purpose of determining whether an entity has a controlling interest. An entity is defined in section 3K and may be a person or 2 or more associated persons.

**Section 3M Application – sdiv 1A.4.3** applies this Subdivision for the purposes of grouping an entity with a corporation under section 3K.

**Section 3N Direct interest** provides that an entity has a direct interest in a corporation if the entity can directly or indirectly exercise, control the exercise, or substantially influence the exercise of voting power attached to voting shares in the corporation.

It also provides that the percentage interest of voting power which an entity controls is the percentage of the total voting power which the entity can exercise, control the exercise of, or substantially influence the exercise of.

**Section 3O Indirect interest** provides that an entity has an indirect interest in a corporation (called the indirectly controlled corporation) if the entity is linked to that corporation by a direct interest in another corporation (called the directly controlled corporation) that has a direct and/or an indirect interest in the indirectly controlled corporation.

It also provides that the value of an indirect interest in an indirectly controlled corporation is determined by multiplying the value of the entity's direct interest in the directly controlled corporation by the value of the directly controlled corporation's interest in the indirectly controlled corporation. Examples are provided to illustrate how indirect interests may be worked out and how an entity may have more than 1 indirect interest in a corporation.

**Section 3P Aggregation of interests** provides that an entity has an aggregate interest in a corporation when it has either a direct interest and one or more indirect interests, or 2 or more indirect interests. It also provides that the value of an entity's aggregate interest is the sum of the entity's direct and indirect interests in that corporation. And provides examples to illustrate the aggregation of interests.

**Subdivision 1A.4.4 Groups - miscellaneous** - new heading inserted.

**Section 3Q Exclusion from groups** provides the Commissioner with a discretion to exclude a member from a group if satisfied that the business conducted by that member is independent of, and not connected with, the business conducted by any other member of the group. In considering the application of this discretion, the Commissioner will have regard to the nature and degree of ownership and control of the businesses, the nature of the businesses, and any other relevant matters. The discretion is not available for corporations that are related bodies corporate under section 50 of the Corporations Act.

The Commissioner's determination is a Notifiable Instrument and it may commence on or before its notification day to enable persons to be ungrouped from an appropriate date, even if that date is prior to the determination. Such a determination may be revoked if the circumstances do not apply to the person.

**Section 3R Designated group employers** provides that the members of a group or the Commissioner may designate one member of the group to be the designated group employer for the group. The designated group employer is the member entitled to claim the benefit of the threshold on behalf of the group when calculating its payroll tax liability.

**Clauses 11 and 12 – Agreement etc to reduce or avoid liability to payroll tax and Section 5 (1)** omits the words 'or renders' and 'or rendering' for consistency – see Clause 8 and 9.

**Clause 13 – New division 2.1 heading -**

**Division 2.1 Liability to taxation – general concepts.** This division is inserted before section 6.

**Clause 14 – Payroll tax liability**

**New section 6 (3)** inserts a new provision to indicate that payroll tax is calculated under division 2.3 and division 2.4.

**Clause 15 - Registration of employers**

**Section 7 (1)** is substituted to provide that an employer who pays wages in the ACT must register for payroll tax if their total wages in a month exceeds the amount determined for this section under the Taxation Administration Act section 139.

If the employer is a member of a group, the total wages paid or payable by all members of the group together in a month determines whether the employer should register for payroll tax. If a registered employer's wages fall below the weekly exemption level during any one month, the Commissioner may cancel that employer's registration.

**Clause 16 – New section 8**

**Section 8 Joint and several liability of group members** provides for the joint and several liability of every member of a group where any one of them fails to pay an amount required under the Act. The Commissioner is entitled to recover the whole amount payable from any member of the group. These provisions incorporate existing provisions in the Payroll Tax Act (at section 11A) and also those in the Taxation Administration Act (at section 50 and Dictionary definition of "tax").

**Clause 17 – New division 2.2 heading.**

**Division 2.2 Liability to taxation – exemption from tax** is inserted before section 9.



## **Clause 18 - Exemption from tax**

**Section 9 (3) (b)** omits 'renders' and substitutes 'provides' for consistency in use of terms.

## **Clause 19 – New division 2.3.**

**Division 2.3 Liability to taxation – calculation of monthly payroll tax** inserted before section 10 contains the monthly payroll tax calculations.

### **Subdivision 2.3.1 Employer not member of group**

**Section 9C Application - sdiv 2.3.1** – sets out the monthly payroll tax calculations for employers who are not members of a group.

**Section 9D Employer not member of group – amount of tax payable each month** provides that the monthly amount of payroll tax payable by a non-group employer is the total ACT taxable wages paid or payable by the employer during the month, less a deductible amount (calculated under section 9E or 9F as appropriate), and multiplied by the rate of tax determined under the Taxation Administration Act section 139 for this section. The deductible amount represents the payroll tax monthly threshold, or part thereof in circumstances of an employer who pays wages in more than one jurisdiction. Where the deductible amount exceeds the total ACT taxable wages paid or payable, the employer is not required to pay payroll tax in respect of that month. Any overpayment or underpayment of tax under this section is accounted for in the payroll tax annual adjustment contained in Part 2A of this Bill.

**Section 9E Employer not member of group – deductible amount for employer not paying interstate wages.** For an employer who is only liable to pay wages during the relevant month in the ACT, the deductible amount referred to in section 9D is the amount determined under the Taxation Administration Act section 139 for section 7 of the Payroll Tax Act.

**Section 9F Employer not member of group – deductible amount for employer who pays taxable and interstate wages.** Where an employer is liable to pay wages during the relevant month in the ACT and in at least one other Australian jurisdiction, the deductible amount referred to in section 9D is determined in one of two ways. The first is by notice given by the employer to the Commissioner, claiming an ongoing monthly deduction which is calculated in the manner set out in section 9F (2). The second is a Commissioner's determination under section 9F (6), notified to the employer, stating the ongoing monthly deduction applicable to that employer. Where the Commissioner determines a monthly deduction for an employer under this section, it takes precedence over any deduction notified by the employer to the Commissioner.

### **Subdivision 2.3.2 Group with designated group employer**

**Section 9G Application - sdiv 2.3.2** –sets out the monthly payroll tax calculation for employers who are members of a group which has a designated group employer.

**Section 9H Group with designated group employer – amount of tax payable each month if approval in force.** If the Commissioner has approved a designated group employer to lodge a joint return under section 16 (4), the monthly amount of payroll tax payable by the designated group employer is the total ACT taxable wages paid or payable during the month by each of the group members covered by the return, less a deductible amount (calculated under section 9J or 9K as appropriate), and multiplied by the rate of tax determined under the Taxation Administration Act section 139 for this section. Each group member who is not covered by the return is also liable for a monthly amount of payroll tax, calculated by multiplying the group

member's total ACT taxable wages paid or payable during the month by the rate of tax determined under the Taxation Administration Act section 139 for this section.

**Section 9I Group with designated group employer – amount of tax payable each month if approval not in force.** If the Commissioner has not approved a designated group employer to lodge a joint return under section 16 (4), the designated group employer and each of the other group members are liable to pay monthly payroll tax separately on their respective ACT taxable wages. Where this happens, only the designated group employer gets the benefit of the deductible amount (calculated under section 9J or 9K as appropriate).

**Section 9J Group with designated group employer – deductible amount for groups not paying interstate wages.** For a group in which each member is only liable to pay wages during the relevant month in the ACT, the deductible amount for the month is the amount determined under the Taxation Administration Act section 139 for section 7 of the Payroll Tax Act.

**Section 9K Group with designated group employer – deductible amount for groups paying taxable and interstate wages.** Where at least one group member is liable to pay wages during the relevant month in the ACT and in at least one other Australian jurisdiction, the deductible amount referred to in section 9H is determined in one of two ways. The first is by notice given by the designated group employer to the Commissioner, claiming an ongoing monthly deduction for the group, which is calculated in the manner set out in section 9K (2). The second is a Commissioner's determination under section 9K (6), notified to the designated group employer, stating the ongoing monthly deduction for the group. Where the Commissioner determines a monthly deduction for a group under this clause, it takes precedence over any deduction notified by the designated group employer to the Commissioner.

### **Subdivision 2.3.3 Group with no designated group employer**

**Section 9L Application - sdiv 2.3.3** sets out the monthly payroll tax calculation for employers who are members of a group which does not have a designated group employer.

**Section 9M Group with no designated group employer – amount of tax payable each month** provides that the monthly amount of payroll tax payable by a group employer (where there is no designated group employer) is the total ACT taxable wages paid or payable by the employer during the month multiplied by the rate of tax determined under the Taxation Administration Act section 139 for this section.

**Clause 20 - Sections 10 to 14** – are substituted.

**Division 2.4 Liability to taxation – calculation of payroll tax for financial year**  
A note for division 2.4 states that this division may apply to a period other than a financial year or a month (see section 17 (4) (b)). When the Commissioner approves a return period other than a month, the tax payable is calculated using the formulae in division 2.4, adapted as stated in section 17 (4) (b).

### **Section 10 Amount of tax payable – employer not a member of a group.**

**Section 10 (1)** provides that this section only applies to an employer who is not a member of a group and sets out the annual adjustment calculation of payroll tax for non-group employers. The annual adjustment gives employers the opportunity to review their tax paid for the financial year and make any necessary adjustments to correct overpayments or underpayments made during that year.

**Section 10 (2)** provides that an employer who is not part of a group is not liable to pay payroll tax in a financial year if the total ACT and other Australian taxable wages paid or payable by the employer is at or below the employer's threshold amount. This amount is the maximum threshold, adjusted by the ratio of the number of days in the financial year in which the employer was liable to pay ACT or other Australian taxable wages, to the total number of days in that year.

**Section 10 (3)** provides the formula for calculating the payroll tax of an employer who is not part of a group and whose total ACT and other Australian taxable wages paid or payable during a financial year exceeds the employer's threshold amount. The payroll tax payable is the ACT taxable wages of the employer, less the applicable deduction, multiplied by the rate of tax determined for this section under Taxation Administration Act section 139.

The applicable deduction is the maximum threshold, adjusted by the ratio of the employer's ACT taxable wages to its total Australian taxable wages, and also by the ratio of the number of days in the financial year in which the employer was liable to pay ACT or other Australian taxable wages, to the total number of days in that year.

**Section 10 (4)** defines the variables which are used in the annual adjustment calculations in subsections (3) and (4).

**Section 11 Amounts of tax payable – group with a designated group employer.**

**Section 11 (1)** provides that this section only applies to an employer who is a member of a group for which there is a designated group employer and this section sets out the annual adjustment calculation of payroll tax for employers who are part of such a group.

**Section 11 (2)** provides that none of the members of a group are liable to pay payroll tax in a financial year if the total ACT and other Australian taxable wages paid or payable by the group during that year is at or below the group threshold amount. This amount is the maximum threshold, adjusted by the ratio of the number of days in the financial year in which at least one group member was liable to pay ACT or other Australian taxable wages, to the total number of days in that year.

**Section 11 (3)** provides that subsections (4) and (5) contain the formulas for calculating the payroll tax of a designated group employer and each other member of a group, where the total ACT and other Australian taxable wages paid or payable by the group during a financial year exceeds the group threshold amount.

**Section 11 (4)** provides that the payroll tax payable by the designated group employer is the ACT taxable wages of the group, less the applicable deduction, multiplied by the rate of tax determined for this section under Taxation Administration Act section 139.

The applicable deduction is the maximum threshold, adjusted by the ratio of the group's ACT taxable wages to its total Australian taxable wages, and also by the ratio of the number of days in the financial year in which at least one group member was liable to pay ACT or other Australian taxable wages, to the total number of days in that year.

**Section 11 (5)** provides that the payroll tax payable by a member of a group other than the designated group employer is the taxable ACT wages of the group member multiplied by the rate of tax determined for this section under Taxation Administration Act section 139.

**Section 11 (6)** defines the variables which are used in the annual adjustment calculations in subsections (2), (4) and (5).

**Section 12 Amounts of tax payable – group with no designated group employer.**

**Section 12 (1)** provides that this section only applies to an employer who is a member of a group for which there is no designated group employer. This section sets out the annual adjustment calculation of payroll tax for employers who are part of such a group.

**Section 12 (2)** provides that the payroll tax payable by a member of a group (for which there is no designated group employer) is the ACT taxable wages of the group member multiplied by the rate of tax determined for this section under Taxation Administration Act section 139.

**Section 12 (3)** defines the variables which used in the annual adjustment calculation in this section.

**Division 2.5 Adjustments of tax.** This division provides for an annual adjustment of payroll tax, which gives employers the opportunity to review their tax paid for a financial year and make any necessary adjustments to correct overpayments or underpayments made during that year. Specific rules apply to an employer who changes from being a group employer to a non-group employer (or vice versa) during a financial year, to an employer who ceases to pay or be liable to pay wages during a financial year, and to an employer whose wages fluctuate with different periods of the year by reason of the nature of the employer's trade or business.

**Section 13 Definitions – div 2.5** defines terms which are used in the division.

**Section 14 Determination of correct amount of payroll tax** provides that this division applies to both group and non-group employers. Where an employer is a group employer for parts of a financial year, and a non-group employer for other parts of the same financial year, separate adjustments are to be made in respect of any period as a group employer, and any period as a non-group employer.

**Section 15 Annual adjustment of payroll tax** provides for an annual adjustment of payroll tax at the end of each financial year in accordance with the calculations in sections 10, 11 and 12. Where an employer has paid too much tax throughout a financial year, the employer may apply for a refund from the Commissioner. Conversely, where an employer has not paid enough tax throughout a financial year, the employer must make up the difference in their annual return.

**Section 15A Adjustment of payroll tax if employer changes circumstances** requires an employer to make an adjustment of payroll tax if they change their circumstances at any time during a financial year, meaning that they cease to pay or be liable to pay wages, become a member of a group, or cease to be a member of a group. The adjustment is made at the time that the employer's circumstances change, and relates to the period commencing from the start of the financial year (or the last change of circumstances, whichever is more recent) and ending with the change of circumstances. The adjustment requires an employer to compare their monthly returns with their actual liability for the period (using the annual payroll tax calculations in sections 10, 11 and 12 pro-rated for the number of days in the period). The employer is then required to make up any tax shortfall to the Commissioner. Any payments made under this clause are taken into account in the employer's annual adjustment calculation at the end of the financial year.

**Section 15B Special provision if wages fluctuate** ensures that an employer who only pays or is liable to pay wages for part of a financial year receives the benefit of the payroll tax threshold for the whole year if the Commissioner determines that, by reason of the nature of the employer's trade or business, the wages paid or payable by the employer fluctuate with different periods of the year. If the employer only conducts that trade or business in Australia for part of the financial year, they can still seek a determination under this clause, and if successful, will receive the benefit of the payroll tax threshold for that part of the financial year. This is the current administrative practice in the ACT, now formalised in legislation.

**Clause 21 - Payroll tax returns**

**Section 16 (2)(c)** requires any tax that is payable in relation to the return under division 2.3 is to be paid by the employer with the lodgement of the monthly return.

**Clause 22 - New section 16 (4) and (5)** provides that designated group employers may, with the Commissioner's approval, lodge joint returns on behalf of specified members of the group. Each employer covered by the return is taken to have complied with section 16.

**Clause 23 - Returns – variation of time for lodging**

**Section 17 (4) (b)** requires any tax that is payable in relation to each return lodged in accordance with a notice issued by the Commissioner under section 17 to be paid by the employer when the return is lodged. The amount is calculated in accordance with division 2.4 as if a reference to a financial year (except for a reference in DFY) is a reference to the period agreed by the Commissioner in the notice, and with any other necessary changes, or those prescribed by regulation (if any).

**Clause 24 – Review of decisions**

**New section 19 (aa) and (bb)** inserts, before section 19 (a), provisions to allow the review of the commissioner's decision to refuse to determine that a person is not a member of a group, and to the revocation of a determination that a person is not a member of a group. This provides the same rights as previously held under the Taxation Administration Act (see Schedule 1 of this Bill - omitted Schedule 1, section 1.2 (k) of the Taxation Administration Act).

**Clause 25 – New section 100** inserted after section 21.

**Section 100 Transitional** provides that the *Payroll Tax Act 1987* and the *Taxation Administration Act 1999* as in force before the commencement of the *Payroll Tax Amendment Act 2007* will continue to apply to any payroll tax liability incurred before the amendment, and anything done to satisfy that liability. This applies even if a liability is not discovered until after the amendment.

**Clause 26 – New schedule 2 – new heading is inserted.**

**Schedule 2 Motor vehicle allowances** (applies to section 3C (5)) and deals with an employer's obligation to keep certain records where the employer claims an exemption under this Schedule for any part of a motor vehicle allowance paid or payable by the employer.

**Section 2.1 Meaning of *business journey*** – sch 2 defines *business journey* for the purposes of this Schedule.

**Section 2.2 Continuous recording method** provides for certain information to be recorded by an employer if the employer elects to use the continuous recording method for calculating the number of business kilometres travelled during a financial year.

**Section 2.3 Averaging method** provides for certain information to be recorded by an employer if the employer elects to use the averaging method for calculating the number of business kilometres travelled during a financial year. The averaging method allows employers to record the percentage of business kilometres travelled to total kilometres travelled in the relevant 12-week period, and then use this percentage to calculate business kilometres travelled throughout the whole financial year, as well as the next 4 financial years.

**Section 2.4 Meaning of relevant 12-week period** stipulates that the relevant 12-week period for the averaging method of recording business kilometres travelled is a continuous period of at least 12 weeks. If the motor vehicle is maintained for less than 12 weeks, then the period is the entire period the motor vehicle was maintained. The 12-week period may overlap into the start or end of a financial year, so long as it includes part of the year.

**Section 2.5 Replacing one motor vehicle with another motor vehicle** provides that an employer, which has elected to use the averaging method, may replace one motor vehicle with another motor vehicle. An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.

**Section 2.6 Changing method of recording** provides for an employer to change from using the averaging method to the continuing recording method, or vice versa, from the beginning of a financial year.

**Clause 27 - Dictionary, note 2** inserts Corporations Act, domestic partner and domestic relationship.

**Clauses - 28, 29, 30, 31, 32, 33, 34 and 35** insert new definitions and omit redundant definitions.

#### **Schedule 1 Taxation Administration Act 1999**

**Clause 1.1 Section 2, note 1** substitutes a new signpost definition as ‘group’ has been omitted from the Act.

**Clause 1.2 Section 6 (3) (b)** has been omitted as this Act no longer deals with the tax liability of groups of corporations. This Bill inserts grouping provisions into the *Payroll Tax Act 1987*.

**Clause 1.3 Division 11.1** has been omitted as this Act no longer deals with the tax liability of groups of corporations. This Bill inserts grouping provisions into the *Payroll Tax Act 1987*.

**Clause 1.4 Schedule 1, section 1.2 (k)** has been omitted as the review rights are no longer required in this Act. This Bill inserts equivalent review rights into the *Payroll Tax Act 1987*.

**Clause 1.5 Dictionary, definitions of *group* and *primary group*** have been omitted as this Act no longer deals with the tax liability of groups of corporations from the commencement of this Bill.

