

**2011**

**The Legislative Assembly for  
Australian Capital Territory**

**Payroll Tax Bill 2011**

**Explanatory Statement**

**Circulated by authority of  
Treasurer  
Katy Gallagher MLA**

# Payroll Tax Bill 2011

## Background

The ACT along with all States and the Northern Territory has been engaged in a national payroll tax harmonisation project (the National Project). The National Project's aim is to improve consistency in payroll tax administration, including reducing compliance costs for businesses that operate across State and Territory borders.

The Payroll Tax Bill 2011 (the Bill) is a re-write of the ACT's *Payroll Tax Act 1987* with harmonised legislation in an effort to further reduce the compliance costs for businesses operating in the ACT and other jurisdictions.

This Bill adopts a high degree of uniformity with the structure and language used in harmonised legislation except where differences are necessary to accommodate ACT specific issues or policy. Some of the specific issues are:

- maternity and adoption leave are harmonised with the other jurisdictions, the ACT also includes an exemption for primary carer leave;
- exemptions for charitable organisations – the ACT exemption is based on the exempt status of the charitable entity and not on the separate activities of the charity;
- employment agents who on-hire staff to exempt organisations – the ACT will continue to exempt employment agents only where the employment agent itself is an exempt body; and
- rates and thresholds.

## Summary

The Bill re-writes the *Payroll Tax Act 1987* (the Act) in respect of adopting the structure and language of the NSW and VIC harmonised legislation where possible and maintaining ACT specific differences. There is no change in policy as a result of this Bill.

## Commencement Date

The Bill amends the Act so that the amendments take effect from 1 July 2011.



## Details of the Payroll Tax Bill 2011

### **Clause 1 – Name of Act**

This clause provides that the Act is named the *Payroll Tax Act 2011*.

### **Clause 2 – Commencement**

This clause provides that the Act commences on 1 July 2011.

### **Clause 3 – Dictionary**

This clause provides that the dictionary is at the end of the Act.

### **Clause 3A – Numbering**

This clause explains the reasoning behind the numbering especially in relation to the equivalent *NSW Payroll Tax Act 2007*.

### **Clause 4 – Notes**

This clause explains that the notes in the Act are explanatory information and are not part of this Act.

### **Clause 5 – Offences against Act – application of Criminal Code etc**

This clause states that there is other legislation that applies in relation to offences in this Act.

### **Clause 6 – Imposition of payroll tax**

This clause sets out the basis for liability under the Bill, by providing that payroll tax is imposed on all taxable wages.

### **Clause 7 – Who is liable for payroll tax?**

This clause imposes payroll tax on employers. An employer is liable for payroll tax in respect of all ACT taxable wages paid or payable by that employer.

### **Clause 8 – Amount of payroll tax**

This clause provides that the method for determining an employer's payroll tax liability is contained in Schedules 1 and 2 to the Bill.

### **Clause 9 – When must payroll tax be paid?**

This clause sets out when payroll tax must be paid. For wages paid or payable from July until May, payroll tax for each month must be paid by the 7th day of the following month. At the end of the financial year, registered employers must lodge an annual adjustment return, due by 21 July, which accounts for any underpayment or overpayment of tax throughout the year, and includes tax for wages paid or payable in the month of June.

The Commissioner has the power to fix a different date for payment of payroll tax where the Commissioner believes that a person may leave Australia before their payroll tax liability arises.

### **Clause 10 – Meaning of taxable wages**

This clause defines taxable wages as taxable wages that are taxable in the ACT and that exempt wages are not taxable wages.

### **Clause 11 – Wages taxable in the ACT**

Subclause (1) defines taxable wages to mean taxable wages, other than exempt 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; or
- paid or payable outside Australia for services performed mainly in the ACT.

### **Clause 11A – Jurisdiction in which employee is based**

This clause provides a series of tests which determine the jurisdiction in which an employee is based. The primary test is that the jurisdiction in which the employee's principal place of residence is located is to be taken as the jurisdiction in which the employee is based. If an employee does not have an Australian principal place of residence, then that employee is treated as an employee who is not based in an Australian jurisdiction.

### **Clause 11B – Jurisdiction in which employer is based**

This clause is to be referenced when it cannot be determined in which jurisdiction an employee is based. The primary test in this clause is (1) (a): if the employer has an ABN, the employer's registered business address determines the jurisdiction in which the employer is based. If the employer does not have an ABN, then it is determined by the location of the employer's principal place of business.

However, if the employer has a registered business address in more than one jurisdiction, then the principal place of business of the employer is taken into account for determining where the employer is based.

If an employer does not have a registered business address or a principal place of business, then the employer is treated as if they are not based in any Australian jurisdiction.

### **Clause 11C – Place and date of payment of wages**

This clause describes how the place and date of wages is to be determined.

## **Part 3 Wages**

### **Division 3.1 General concept of wages**

#### **Clause 13 – Meaning of wages**

This clause provides the general concept of wages for the purposes of the Bill. Wages means wages, remuneration, salary, commission, bonuses or allowances paid or payable to an employee, whether paid or payable at piece work rates or otherwise, and whether paid or payable in cash or in kind. The clause also provides that wages include:

- an amount paid or payable as remuneration to a person by the territory or territory authority;

- an amount paid or payable under any prescribed classes of contracts to the extent to which that payment is attributable to labour;
- an amount paid or payable by a company as remuneration to a director;
- any amount that is included as or taken to be wages under the Bill.

## **Division 3.2 Fringe benefits**

### **Clause 14 – Wages includes fringe benefits**

This clause provides that a fringe benefit constitutes wages for payroll tax purposes, with the exception of certain benefits which are exempt benefits under the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.

### **Clause 15 – Value of wages that are fringe benefits**

Subclause (1) provides a formula for determining 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.

Subclauses (2) and (3) specify the basis 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 subclause (1) unless the employer has made an election under clause 16, and that election is still in force.

### **Clause 16 – Employer election for taxable value of fringe benefits**

This clause permits employers to elect to declare one twelfth of the ACT aggregate fringe benefits amount (grossed up using the formula for "Type 2 benefits") included in a preceding annual FBT return. The clause 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 3.3 Superannuation contributions**

### **Clause 17 – Wages includes superannuation contributions**

This clause provides that a superannuation contribution constitutes wages for payroll tax purposes. A superannuation contribution includes an employer contribution:

- to a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;
- as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;
- as a form of superannuation, provident or retirement fund or scheme, including to the Superannuation Holding Accounts Special Account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth, to a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth, and contributions, including "top up payments", made to unfunded or partly funded superannuation schemes.

A superannuation contribution also includes a non-monetary contribution, the value of which is to be worked out in accordance with clause 43 of the Bill.

A superannuation contribution also constitutes wages if paid or payable in respect of a company director, or in respect of a person taken to be an employee under the contractor provisions.

## **Division 3.4 Shares and options**

### **Clause 18 – Inclusion of grant of shares and options as wages**

This clause provides that the grant of a share or option to an employee constitutes wages for payroll tax purposes.

The clause also ensures that the grant of a share or option by or to a third party may be subject to payroll tax under the third party payment provisions in clause 46 of the Bill.

### **Clause 19 – Choice of relevant day**

This clause permits employers to elect to treat the wages constituted by the grant of a share or option as having been paid or payable on the date the share or option is granted to the employee, or the date on which the share or option vests in the employee. The vesting date of a share is the date on which any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded. The vesting date for an option is the earlier of two dates, being the date on which the share to which the option relates is granted to the employee, or the date on which the employee exercises a right to have the share transferred or allotted to (or vest in) him or her. The clause adopts provisions of the *Income Tax Assessment Act 1997* of the Commonwealth for determining when a share or option is granted.

### **Clause 20 – Deemed choice of relevant day in special cases**

This clause provides that, where an employer does not include the value of a grant of a share or option in its taxable wages for the financial year in which the grant occurred, the wages constituted by the grant are taken to have been paid or payable on the vesting date of the share or option. Where the value of a grant of a share or option is nil, or the wages constituted by such a grant would not be liable to payroll tax on the date of the grant, such wages will be treated as paid or payable on the date that the share or option was granted.

### **Clause 21 – Effect of rescission, cancellation of share or option**

The clause ensures that payroll tax will continue to be payable in respect of a grant of a share or option that is later withdrawn, cancelled or exchanged, if it is withdrawn, cancelled or exchanged for valuable consideration. The clause also allows an employer to reduce its taxable wages by the value of a grant of a share or option, where it previously paid payroll tax on the grant, and the grant is subsequently rescinded because the conditions attaching to it were not met.

### **Clause 22 – Grant of share as result of exercise of option**

This clause ensures that, where an employer has paid any applicable payroll tax in respect of the grant of an option, the subsequent grant of a share pursuant to the exercise of that option is not subject to payroll tax. Additionally, payroll tax is not payable where an employer grants a share pursuant to the exercise of an option, if the option was granted before 1 July 2005.

### **Clause 23 – Value of shares and options**

This clause provides for the valuation of grants of shares or options in accordance with Commonwealth income tax provisions. Any consideration paid by an employee in respect of the share or option is to be deducted from the value of the share or option for payroll tax purposes. The employer may elect a method for valuation, however the Commissioner may also determine the method by which the value of a share or option is worked out.

### **Clause 24 – Inclusion of shares and options granted to directors as wages**

This clause ensures that the grant of a share or option to a director as remuneration for the appointment or services of the director constitutes wages for payroll tax purposes.

### **Clause 26 – Place where wages are payable**

This clause 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 an ACT Act. 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 clause 11(1)(b) or (c) of this Bill.

## **Division 3.5 Termination payments**

### **Clause 27 – Definitions**

This clause defines termination payment as a payment made in consequence of the retirement from, or termination of, any office or employment of an employee. This includes: unused annual leave and long service leave payments, and employment termination payments (within the meaning of section 82-130 of the *Income Tax Assessment Act 1997* of the Commonwealth) that would be included in the assessable income of an employee under Part 2-40 of that Act, including transitional termination payments within the meaning of section 82-10 of the *Income Tax (Transitional Provisions) Act 1997* of the Commonwealth, and any payment that would be an employment termination payment but for the fact it was received more than 12 months after termination. The definition of termination payment also includes amounts paid or payable by a company as a consequence of terminating the services or office of a director, or by a person who is taken to be an employer under the contractor provisions contained in Division 7, as a consequence of terminating the supply of services by a person taken to be an employee under those provisions.

### **Clause 28 – Termination payments**

This clause provides that a termination payment, as defined in clause 27, constitutes wages for payroll tax purposes.

## **Division 3.6 Allowances**

### **Clause 29 – Motor vehicle allowances**

This clause provides that wages do not include the exempt component of a motor vehicle allowance, calculated in accordance with this clause. 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

prescribed by regulations under the *Income Tax Assessment Act 1997* of the Commonwealth or otherwise as prescribed by determination under the Bill). The method for determining the number of business kilometres travelled is determined in accordance with Part 1.5 of Schedule 1.

### **Clause 30 – Accommodation allowances**

This clause 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 ascertained by reference to Australian Taxation Office determinations in respect of reasonable daily travel allowance expenses, or is otherwise as prescribed by determination under the Bill.

## **Division 3.7 Contractor provisions**

### **Clause 31 – Definitions**

This clause contains the following definitions applicable to the contractor provisions: contract which is defined to include an agreement, arrangement or undertaking, whether formal or informal and whether express or implied. Relevant contract which is defined to have the meaning given in clause 32 of the Bill. Re-supply which, in relation to goods acquired from a person, is defined to include a supply to the person of goods in an altered form or condition, and a supply to the person of goods in which the first-mentioned goods have been incorporated. Services which is defined to include results, whether goods or services, of work performed. Supply which is defined to include supply by way of sale, exchange, lease, hire or hire-purchase, and in relation to services includes the provision, grant or conferral of services.

### **Clause 32 – Meaning of relevant contract**

Subclause (1) defines a relevant contract as one under which a person, in the course of a business carried on by that person, supplies services to another person, or is supplied with persons to perform work, or gives out goods to natural persons for work to be performed by those persons and for the re-supply of those goods to the first-mentioned person.

Subclause (2) provides that various contracts are not relevant contracts for payroll tax purposes. These include contracts under which a person, in the course of a business carried on by that person, is supplied with services meeting any of the following criteria:

- the services are incidental to the supply or use of goods by the person who is supplying the services;
- the services are of a kind not ordinarily required in the course of the person's business and which are provided by persons who are genuinely supplying services to the public generally;
- none of the above criteria are met, but the Commissioner is satisfied that the services are supplied by a person who ordinarily supplied services of that kind to the public generally in the financial year in respect of which liability is being assessed.

The clause also allows the Commissioner if subsection (2) does not apply to determine that the contract or arrangement under which the services were supplied was entered into for the purposes of evading or avoiding tax.



The clause provides that the relevant contract provisions do not apply to employment agency contracts, which are covered in Part 2.3 of schedule 2.

#### **Clause 33 – Contractors – people taken to be employers**

This clause provides rules for determining which of the parties to a relevant contract is taken to be the employer for payroll tax purposes.

#### **Clause 34 – Contractors – people taken to be employees**

This clause provides rules for determining which of the parties to a relevant contract is taken to be the employee for payroll tax purposes.

#### **Clause 35 – Amounts under relevant contracts taken to be wages**

This clause provides that amounts paid or payable by an employer under a relevant contract are taken to be wages for payroll tax purposes. However, where only part of the amount paid or payable relates to the performance of work or re-supply of goods under the contract, the Commissioner has the power to determine how much of the overall amount paid or payable will be taken to be wages for payroll tax purposes.

#### **Clause 36 – Contractors – liability provisions**

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

### **Division 3.8 Employment agents**

#### **Clause 37 – Definitions – Act**

This clause defines an employment agency contract, which includes an agreement, arrangement or undertaking under which an employment agent procures the services of another person (service provider) for a client of the agent. Due to the wide concept of person, a service provider may include a company, a partnership or a natural person. An employment agency contract does not include arrangements under which a contract of employment results between the service provider and the client.

#### **Clause 38 – Employment agents – people taken to be employers**

This clause provides that an employment agent under an employment agency contract is taken to be an employer for payroll tax purposes.

#### **Clause 39 – Employment agents – people taken to be employees**

This clause provides that the individual who performs the work for the client of the employment agent is taken to be an employee of the employment agent. This clause applies to situations where the service provider is a company, partnership or trustee. It provides that the individual who in fact performs the work is taken to be an employee of the employment agent.

#### **Clause 40 – Amounts taken to be wages**

This clause provides that any amount paid or payable (or the value of any benefit which would be a fringe benefit or a payment which would be a superannuation contribution) provided to or in relation to the service provider in respect of the

provision of services under the employment agency contract, is taken to be wages paid or payable by the employment agent.

#### **Clause 41 – Employment agents – liability**

This clause is designed to prevent double taxation. Where an employment agent has paid payroll tax in respect of an amount or benefit taken to be wages under an employment agency contract, no other person is liable to pay payroll tax in respect of wages paid or payable in respect of the provision of those services by the service provider for the client.

#### **Clause 42 – Employment agents – agreement to reduce or avoid liability to payroll tax**

This clause provides that if an employment agency contract has the effect of reducing or avoiding the liability of any party to the contract to the assessment, imposition or payment of payroll tax, the Commissioner may disregard the contract and take any party to it to be an employer and any payment in respect of the contract to be wages.

### **Division 3.9 Wages – other**

#### **Clause 43 – Value of wages paid in kind**

This clause sets out the method for determining the value of wages (except fringe benefits, shares and options) that are paid or payable in kind.

#### **Clause 44 – GST excluded from wages**

This clause provides for GST to be excluded from wages in circumstances where payment for a supply of services is taken to be wages under the Bill, and the payment includes an amount of GST.

#### **Clause 45 – Wages paid by group employers**

This clause 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 a group if the member were the employer of the employee to whom the wages were paid.

#### **Clause 46 – Wages paid by or to third parties**

This clause ensures that payments of money or provision of other valuable consideration, which is referable to an employee's services to his or her employer, is taken to be wages paid or payable by the employer to the employee (and therefore subject to payroll tax), even if the amount is paid, or the benefit is provided, by—

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

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

#### **Clause 47 – Agreement etc to reduce or avoid liability to payroll tax**

This is an anti-avoidance provision which relates to agreements etc. under which a individual performs services for or on behalf of another person, and a payment in respect of those services is made to a person related or connected to the individual.

If such an agreement has the effect of reducing or avoiding the liability of any party to the agreement to the assessment, imposition or payment of payroll tax, the Commissioner may disregard the agreement and take any party to it to be an employer and any payment in respect of the agreement to be wages.

## **Part 4 Exemptions**

### **Division 4.1 Charitable organisations**

#### **Clause 48 – Charitable organisations**

This clause provides that the wages mentioned in schedule 2, part 2.2 are exempt wages.

### **Division 4.1A Employment agents**

#### **Clause 48A – Employment agents and subcontractors**

This clause provides that wages mentioned in schedule 2, part 2.3 are exempt wages.

### **Division 4.2 Education and training**

#### **Clause 49 – Educational services and training**

This clause provides that wages mentioned in schedule 2, part 2.4 are exempt wages.

### **Division 4.3 Hospitals**

#### **Clause 51 – Hospitals**

This clause provides that wages mentioned in schedule 2, part 2.5 are exempt wages.

### **Division 4.4 Maternity, adoption and primary carer leave**

#### **Clause 53 – Maternity and adoption leave**

This clause provides an exemption from payroll tax in respect of paid maternity leave and paid adoption leave. Employers providing paid maternity or adoption leave are entitled to an exemption from tax for any wages paid or payable to an employee, up to a maximum of 14 weeks maternity leave or adoption leave and only in relation to leave taken before the relevant day for the pregnancy, birth or adoption.

#### **Clause 53A – Primary carer leave**

This clause provides that wages mentioned in schedule 2, part 2.6 are exempt wages.

### **Division 4.5 Volunteer firefighters, emergency service volunteers and other volunteers under the Emergencies Act**

#### **Clause 55 – Volunteer firefighters**

This clause provides an exemption for wages that are paid or payable in relation to volunteer members of the Rural Fire Service or community fire units who take part in activities under the *Emergencies Act 2004*.

### **Clause 56 – Emergency service volunteers**

This clause provides an exemption for wages that are paid or payable in relation to volunteer members of the State Emergency Service (SES) who take part in activities under the *Emergencies Act 2004*.

### **Clause 56A – Other volunteers under Emergencies Act**

This clause provides an exemption for wages that are paid or payable in relation to casual volunteers or an emergency services support volunteer who take part in activities under the *Emergencies Act 2004*.

### **Clause 57 – Limitation of exemption**

This clause provides that the exemption under this division does not apply to wages paid or payable as part of approved leave.

## **Division 4.7 Governor-General and Defence**

### **Clause 61 – Governor-General**

This clause provides that wages paid or payable by the Governor General are exempt wages.

### **Clause 62 – Defence personnel**

This clause provides an exemption for wages paid or payable to an employee who is on leave from employment by reason of being a member of the Defence Force of the Commonwealth, or the armed forces of any part of the Commonwealth of Nations.

## **Division 4.8 Foreign government representatives**

### **Clause 64 – Consular and non-diplomatic representatives**

This clause provides an exemption for wages paid or payable by a consular or other representative in Australia to members of his or her official staff. This exemption does not apply to a diplomatic representative.

## **Division 4.9 Services outside Australia**

### **Clause 66A – Wages paid or payable in relation to services performed in other countries**

This clause provides an exemption for wages paid or payable in relation to services performed in other countries for a continuous period of more than six months.

## **Division 4.10 Exemptions - Other**

### **Clause 66B – Wages paid or payable to certain unemployed people**

This clause provides that wages mentioned in schedule 2, part 2.7 are exempt wages.

### **Clause 66C – Wages paid or payable from certain bank accounts**

This clause provides that wages mentioned in schedule 2, part 2.8 are exempt wages.

### **Clause 66D – Wages paid or payable by Territory authority**

This clause provides that wages mentioned in schedule 2, part 2.9 are exempt wages.

## Part 5 Grouping of employers

### Division 5.1 Interpretation

#### Clause 67 – Definitions

This clause provides definitions of business and group for the purposes of this Part.

#### Clause 68 – Grouping provisions to operate independently

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

### Division 5.2 Business groups

#### Clause 69 – Make up of groups

This clause 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.

#### Clause 70 – Groups of corporations

This clause provides that corporations constitute a group if they are related bodies corporate within the meaning of the *Corporations Act 2001*.

#### Clause 71 – Groups arising from the use of common employees

This clause 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 people; or
- one or more employees of an employer are employed solely or mainly to perform duties for one or more businesses carried on by one or more other people; or
- one or more employees of an employer perform duties for one or more businesses carried on by one or more other people, 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.

#### Clause 72 – Groups of commonly controlled businesses

This clause provides for groups arising through common control of two 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 people) has a controlling interest in a business vary depending upon the type of entity conducting the business (e.g. a corporation, partnership or trust), and generally relate to the level of ownership or control of the business, or of the entity conducting the business.

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

- 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 2001* of the Commonwealth) 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;
- if a corporation has a controlling interest in a business, any related body corporate of the corporation (within the meaning of the *Corporations Act 2001* of the Commonwealth) 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.

### **Clause 73 – Groups arising from tracing of interests in corporations**

This clause provides for groups arising from the tracing of interests in a corporation. An entity (being a person or two 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%. Division 5.3 applies to this section.

### **Clause 74 – Smaller groups subsumed by larger groups**

This clause provides that, where any person is a member of 2 or more groups, those groups will form a single group.

## **Division 5.3 Business groups—tracing of interests in corporations**

### **Clause 75 – Application**

This clause applies this Division for the purposes of grouping an entity with a corporation under clause 73.

### **Clause 76 – Direct interest**

This clause 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. The clause 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.

### **Clause 77 – Indirect interest**

This clause 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 one indirect interest in a corporation.

### **Clause 78 – Aggregation of interests**

This clause 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.

## **Division 5.4 Groups—miscellaneous**

### **Clause 79 – Exclusion of people from groups**

This clause provides the Commissioner with the 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 2001*.

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.

### **Clause 80 – Designated group employers**

This clause 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.

### **Clause 81 – Joint and several liability**

This clause 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 Bill. The Commissioner is entitled to recover the whole amount payable from any member of the group.

## **Part 6 Adjustments of tax**

### **Clause 81A – Definitions**

This clause provides definitions of group employer and individual employer for the purposes of this Part.

### **Clause 82 – Calculation of correct amount of payroll tax**

This clause provides that this Part applies to both group and non-group employers, and defines various terms which are used in the Part. 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.

### **Clause 83 – Annual adjustment of payroll tax**

This clause provides for an annual adjustment of payroll tax at the end of each financial year in accordance with the calculations in Schedule one. 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.

### **Clause 84 – Adjustment of payroll tax if employer changes circumstances**

This clause 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 Schedule 1, 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.



### **Clause 85 – Special provision if wages fluctuate**

This clause 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.

## **Part 7 Registration and returns**

### **Clause 86 – Registration**

This clause provides that an employer who pays wages in the ACT must register for payroll tax if their total Australian wages exceeds the determined amount during any one month. If the employer is a member of a group, the total Australian wages paid or payable by all members of the group determines whether the employer should register for payroll tax. If a registered employer's wages fall below the monthly determined amount during any one month, the Commissioner may cancel that employer's registration.

### **Clause 87 – Returns**

This clause provides that every employer who is registered, or required to be registered, under the Bill must lodge a monthly return within 7 days after the end of each month except June, and an annual adjustment return (including the monthly return for June) by 21 July of each year. This clause also provides that designated group employers may, with the Commissioner's approval, lodge joint returns on behalf of specified members of the group.

### **Clause 87A – Monthly Returns – lodgement variation**

This clause allows an employer to apply to the commissioner to vary the periods and/or time in which returns must be lodged. The commissioner may give a variation notice to the employer if the commissioner is satisfied that it would be unnecessarily cumbersome for the employer to lodge a monthly return.

### **Clause 87B Monthly returns—exemptions**

This clause allows an employer to apply to the commissioner for an exemption from lodging returns under section 87. An application must be in writing and the commissioner may give an exemption certificate.

## **Part 8A Notification and review of decisions**

### **Clause 87C – Meaning of reviewable decision**

This clause provides a meaning of reviewable decision mentioned in schedule 3, column 3 under a provision of the Act.

### **Clause 87D – Reviewable decision notices**

The commissioner must give a reviewable decision notice if the commissioner makes a reviewable decision.

### **Clause 87E – Applications for review**

This clause provides who may apply to the ACT Civil and Administrative Tribunal (ACAT) for a review of a reviewable decision.

## **Part 9 Miscellaneous**

### **Clause 101 Regulation-making power**

This clause provides a general power for making regulations in respect of procedural matters and things required or permitted to be prescribed under the Bill.

### **Clause 103 Legislation amended**

This clause provides that the legislation in schedule 4 is to be amended as a consequence of this Bill.

### **Clause 104 Legislation repealed**

This clause provides the legislation and instruments that are to be repealed as a consequence of this Bill.

## **Part 10 Transitional**

### **Clause 200 – Meaning of old Act**

Reference to the old Act is a reference to the *Payroll Tax Act 1987* that was in force before 1 July 2011.

### **Clause 201 – Application of this Act and old Act**

This Act applies to payroll tax on taxable wages that are paid or payable on or after 1 July 2011.

### **Clause 202 – General saving**

Anything that had effect under a provision of the old Act before 1 July 2011 continues to have effect under the corresponding provision of this Act.

### **Clause 203 – Fringe benefits – employer election**

An election under the old Act, section 3B (1) that was in force before 1 July 2011 continues to be in force under the new section 16 (1).

### **Clause 204 – Superannuation contributions relating to pre-1 July 1996 service**

This clause clarifies that despite section 11 or section 17, wages does not include a superannuation contribution paid or payable before 1 July 1996.

### **Clause 205 – Approval relating to motor vehicle allowance**

An approval under the old Act section 3C (7) is an approval under section 29 (7) of this Act.

### **Clause 206 – Designated group employer**

A designated group employer under the old Act is a designated group employer under this Act.

### **Clause 207 – Registration of employers**

An employer who is registered under the old Act, section 7 is taken to be registered under this Act, section 86.

### **Clause 208 – Approval relating to group training organisation**

An approval under the old Act, section 9AB (3) is taken to be an approval under this Act, schedule 2, section 2.16 (3).

### **Clause 209 – Variation of time for lodging returns**

A notice under the old Act section 17 (3) is taken to be a variation notice under this Act section 87A (3).

### **Clause 210 – Exemption from lodging returns**

A certificate granted under the old Act section 18 (3) is taken to be an exemption certificate under this Act, section 87B (3).

### **Clause 211 – Transitional regulations**

This clause will allow a regulation to be done to address matters that have not been adequately dealt with.

### **Clause 212 – Expiry**

The transitional provisions expire 5 years after the day it commences.

## **Schedule 1 Calculation of payroll tax liability**

### **Part 1.1 Interpretation**

#### **Clause 1.1 Definitions**

This clause provides a number of definitions which apply throughout the rest of the Schedule.

### **Part 1.2 Employers who are not members of a group**

#### **Clause 1.2 – Application**

This part only applies to employers who are not a member of a group.

#### **Clause 1.3 – Definitions**

This clause defined the variables which are used in the annual adjustment calculations in clauses 1.4 and 1.5 in this part..

### **Clause 1.4 – Payroll of employer not more than threshold**

This clause 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.

### **Clause 1.5 – Payroll of employer over threshold**

This clause 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 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 (which is taken to be 365).

## **Part 1.3 Groups with a designated group employer**

### **Clause 1.6 – Application**

This clause provides that this Part only applies to an employer who is a member of a group for which there is a designated group employer.

### **Clause 1.7 – Definitions**

This clause provides the variables which are used in the annual adjustment calculations in this Schedule.

### **Clause 1.8 – Payroll of group not more than threshold**

This clause 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.

### **Clause 1.9 – Payroll of group over threshold**

Subclause (1) provides that subclauses (2) and (3) 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.

## **Part 1.4 Groups with no designated group employer**

### **Clause 1.10 – Application**

This clause provides that this Part only applies to an employer who is a member of a group for which there is no designated group employer. This Part sets out the annual adjustment calculation of payroll tax for employers who are part of such a group.

### **Clause 1.11 – Meaning of *TW***

This clause defines the variable which is used in the annual adjustment calculation in this section.

### **Clause 1.12 Calculation of payroll tax**

This clause 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.

## **Part 1.5 Motor vehicle allowances**

### **Clause 1.12A Meaning of *business journey***

This clause defines the meaning of business journey.

### **Clause 1.13 Continuous recording method**

This clause provides for certain information to be recorded by an employer if the employer elects to use the continuous recording method for determining the number of business kilometres travelled during a financial year.

### **Clause 1.14 Averaging method**

This provides for certain information to be recorded by an employer if the employer elects to use the averaging method for determining 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 determine business kilometres travelled throughout the whole financial year, as well as the next four financial years.

### **Clause 1.15 Meaning of relevant 12 week period**

This clause 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.

### **Clause 1.16 Replacing one motor vehicle with another motor vehicle**

This clause 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.

### **Clause 1.17 Changing method of recording**

This clause provides for an employer to change from using the averaging method to the continuous recording method, or vice versa, from the beginning of a financial year.

## **Schedule 2 Other ACT provisions**

### **Part 2.1 Calculation of monthly payroll tax**

#### **Division 2.1.1 Employer not member of group**

##### **Clause 2.1 Application**

This clause provides that this division applies only to an employer who is not a member of a group.

##### **Clause 2.2 Employer not member of group — amount of tax payable each month**

This clause provides a calculation of the amount of payroll tax payable on taxable wages paid or payable by the employer in a month. This calculation is the taxable wages minus the deductible amount, which is then multiplied by the determined rate.

##### **Clause 2.3 Employer not member of group — deductible amount for employer not paying interstate wages.**

This clause provides that for an employer who is only liable to pay wages during the relevant month in the ACT, the deductible amount for the month is the amount determined for section 86.

##### **Clause 2.4 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 is determined in one 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 this Schedule.

The second is a Commissioner's determination, 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 clause, it takes precedence over any deduction notified by the employer to the Commissioner.

#### **Division 2.1.2 Group with designated group employer**

##### **Clause 2.5 Application**

This clause sets out the monthly payroll tax calculation for employers who are members of a group which has a designated group employer.

### **Clause 2.6 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 87 (3), 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 2.8 or 2.9 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.

### **Clause 2.7 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 87 (3), 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 2.8 or 2.9 as appropriate).

### **Clause 2.8 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 86 of the Payroll Tax Act.

### **Clause 2.9 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 subsection (3) 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. The second is a Commissioner's determination under subsection (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.

## **Division 2.1.3 Group with no designated group employer**

### **Clause 2.10 Application**

This clause sets out the monthly payroll tax calculation for employers who are members of a group which does not have a designated group employer.

### **Clause 2.11 Group with no designated group employer — amount of tax payable each month**

This clause 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.

## **Part 2.2 Charitable organisations**

### **Clause 2.12 Meaning of charitable organisations**

This clause defines a charitable organisation.

### **Clause 2.13 Exemption from payroll tax — charitable organisations**

This clause provides that wages are exempt wages if they are paid or payable by a charitable organisation (excluding for educational purposes); or a charitable organisation that is a school or college providing education at or below the secondary level of education.

## **Part 2.3 Employment agents**

### **Clause 2.14 Employment agents and subcontractors**

This clause details when wages are exempt wages if they are paid or payable by an employment agent to a person under a contract between the agent and the subcontractor.

## **Part 2.4 Education and training**

### **Clause 2.15 Exemption from tax — new starters**

This clause applies to a new starter who is employed for the first time in an industry or occupation and receiving eligible training in the industry or occupation. Eligible training is defined in this section.

### **Clause 2.16 Exemption from tax — trainees under approved training contracts**

This clause provides an exemption for wages paid or payable by an approved group training organisation to a trainee under an approved training contract as defined in the *Vocational Education and Training Act 2003*. Before approving the exemption, the Commissioner must be satisfied that the group training organisation is a not-for-profit entity that provides training to trainees under approved training contracts and makes trainees available to work for other people.



## **Part 2.5 Hospitals**

### **Clause 2.17 Hospitals**

This clause provides an exemption for wages if they are paid or payable by a hospital that is recognised under the *Health Insurance Act 1973*.

## **Part 2.6 Primary carer leave**

### **Clause 2.18 Primary carer leave**

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

## **Part 2.7 Certain unemployed people**

### **Clause 2.19 Certain unemployed people**

This clause provides that wages are exempt wages if they are paid or payable to a prescribed person. A prescribed person is defined as a person who was, for longer than 12 months immediately before starting employment with the employer; unemployed and receiving an allowance under the *Social Security Act 1991* for that unemployment.

## **Part 2.8 Certain bank accounts**

### **Clause 2.20 Certain bank accounts**

This clause provides that wages are exempt wages if they are paid or payable from a certain bank account.

## **Part 2.9 Territory authorities**

### **Clause 2.21 Territory authorities**

This clause provides that wages are exempt wages if they are paid or payable by a Territory Authority funded solely by money appropriated from the public money of the Territory by an Act unless they are listed in section 9 or 10 of the *Taxation (Government Business Enterprises) Act 2003*.

### **Schedule 3 Reviewable decisions**

Schedule 3 provides a table of reviewable decisions.

### **Schedule 4 Consequential amendments**

Schedule 4 provides a list of Act's that have amendments to them as a consequence of this Bill.

