

Serial 156
Pay-roll Tax Amendment Act 1999
Mr Reed

**A BILL
for
AN ACT**

to amend the *Pay-roll Tax Act*



NORTHERN TERRITORY OF AUSTRALIA
PAY-ROLL TAX AMENDMENT ACT 1999

No. of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. of 1999

AN ACT

to amend the *Pay-roll Tax Act*

[Assented to 1999]
[Second reading 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Pay-roll Tax Amendment Act 1999*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Pay-roll Tax Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 3 of the Principal Act is amended –

- (a) by omitting from subsection (1) the definition of "employer" and substituting the following:

" 'employer' means a person who pays or is liable to pay wages and includes the following:

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- (a) the Territory;
- (b) a Government Business Division within the meaning of section 3(1) of the *Financial Management Act* that is declared by regulation to be an employer for the purposes of this Act;
- (c) a statutory corporation that is declared by regulation to be an employer for the purposes of this Act;
- (d) a body or authority constituted under a law of the Commonwealth, a Territory or a State unless being an authority constituted under a law of the Commonwealth by which it is immune from the operation of this Act;

'FBTA Act' means the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth;"

- (b) by inserting after the definition of "foreign wages" in subsection (1) the following:

" 'fringe benefit' means a fringe benefit to which the FBTA Act applies, other than a benefit that is prescribed under this Act not to be a fringe benefit;"

- (c) by inserting after the definition of "local governing body" in subsection (1) the following:

" 'prescribed benefit' means anything prescribed under this Act to be a benefit;"

- (d) by inserting after the definition of "return period" in subsection (1) the following:

" 'superannuation fund' means a fund carried on –

- (a) for the purposes of a superannuation scheme; or
- (b) to provide retirement savings accounts within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth,

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

'superannuation scheme' includes a provident or retirement fund or scheme;"

- (e) by omitting from the definition of "wages" in subsection (1) "bonus, allowance or other benefit" and substituting "bonus or allowance";

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- (f) by omitting from paragraph (ca) of the definition of "wages" in subsection (1) "bonuses, allowances or other benefits" and substituting "bonuses or allowances";
- (g) by omitting from paragraph (ca) of the definition of "wages" in subsection (1) "employer; and" and substituting "employer;"
- (h) by omitting paragraph (d) of the definition of "wages" in subsection (1) and substituting the following:

- "(d) the amount of any superannuation benefit that, by virtue of section 3A, is to be taken to be paid by the employer; and

- (e) the value of a fringe benefit or prescribed benefit that, by virtue of section 3B or 3C, is to be taken to be paid or payable by the employer."; and

- (j) by omitting subsection (2) and substituting the following:

"(2) For the purposes of this Act, wages, remuneration, salary, commission, bonuses or allowances referred to in paragraph (ca) of the definition of 'wages' in subsection (1) are to be taken to be paid or payable by the employer.

"(3) Despite any other provision of this Act, an exempt benefit under the FBTA Act is not wages for the purposes of this Act unless it is –

- (a) a prescribed benefit; or

- (b) an exempt benefit under section 58W of the FBTA Act.

"(4) The value of taxable wages (other than a fringe benefit or prescribed benefit) that are paid or payable in kind is the greater of –

- (a) the value –

- (i) agreed or attributed to those taxable wages in; or

- (ii) ascertainable for those taxable wages from,

arrangements made between the employer and the employee, whichever is the greater; or

- (b) if the Regulations prescribe how the value of a particular kind of taxable wages is to be determined – the value so determined.

"(5) Where under paragraph (b) or (c) of the definition of 'employer' in subsection (1) a Government Business Division or a statutory corporation is declared to be an employer for the purposes of this Act, this Act applies with the necessary modifications as if –

- (a) section 12 of the *Public Sector Employment and Management Act* did not apply in relation to persons employed in the Government Business Division or statutory corporation but instead those persons were employees of the Government Business Division or statutory corporation; and
- (b) in the case of a Government Business Division that is not a body corporate – the Government Business Division were a corporation."

5. New sections

The Principal Act is amended by inserting after section 3 in Part I the following:

"3A. Superannuation benefits

"(1) For the purposes of paragraph (d) of the definition of 'wages' in section 3(1), a contribution paid or payable by an employer in respect of a person to a superannuation fund is to be taken to be a superannuation benefit paid by the employer in relation to the person when and where the contribution is paid or payable unless clause 6 of the Schedule or a regulation made for the purposes of that clause provides otherwise.

"(2) For the purpose of determining when and where a contribution is paid or payable, section 6(3) and (4) apply as if references to wages were references to contributions.

"(3) For the purposes of this section, the Schedule sets out –

- (a) certain amounts that are to be taken to be contributions paid or payable by an employer in respect of a person to a superannuation fund; and
- (b) certain contributions paid or payable by an employer in respect of a person to a superannuation fund that are not to be taken to be superannuation benefits.

"3B. Fringe benefits

"(1) The value of a fringe benefit that is provided or liable to be provided to or in relation to an employee is to be taken to be wages paid or payable (as the case requires) to the employee.

"(2) A fringe benefit that is provided or liable to be provided to or in relation to an employee by a person other than the employer is to be taken to be provided by the employer.

"(3) The value of a fringe benefit is –

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- (a) the value that would be the taxable value of the fringe benefit under the FBTA Act; or
- (b) if the Regulations prescribe how the value of a particular kind of fringe benefit is to be determined – the value so determined.

"(4) In this section –

'employee' includes a person to whom or in relation to whom a payment of a kind described in paragraph (a), (b) or (c) of the definition of 'wages' in section 3(1) is made;

'provided' has a meaning that corresponds with the meaning of 'provide' as given in section 136 of the FBTA Act and, without limiting the generality of paragraph (a) of the definition of 'provide' as given in that section, includes the meaning given in section 154 of that Act.

"3C. Prescribed benefits

"(1) The value of a prescribed benefit that is provided or liable to be provided to or in relation to an employee is to be taken to be wages paid or payable (as the case requires) to the employee.

"(2) A prescribed benefit that is provided or liable to be provided to or in relation to an employee by a person acting for or in concert with or under an arrangement or undertaking, whether formal or informal and whether express or implied, with the employer is to be taken to be provided by the employer.

"(3) The value of a prescribed benefit is the value determined under the Regulations.

"(4) In this section –

'employee' includes a person to whom or in relation to whom a payment of a kind described in paragraph (a), (b) or (c) of the definition of 'wages' in section 3(1) is made;

'provided' has a meaning that corresponds with the meaning of 'provide' as given in section 136 of the FBTA Act and, without limiting the generality of paragraph (a) of the definition of 'provide' as given in that section, includes the meaning given in section 154 of that Act."

6. Secrecy

Section 5 of the Principal Act is amended by omitting from subsection (2) "\$500 or imprisonment for 12 months" and substituting "imprisonment for 2 years".

7. Pay-roll tax

Section 6 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words after paragraph (b) and substituting "tax at the rate of 6.75% of the total wages paid or payable in a return period of one month"; and
- (b) by omitting subsection (5).

8. General exemption

Section 8 of the Principal Act is amended—

- (a) by omitting from subsection (1) the definition of "prescribed amount" and substituting the following:

" 'prescribed amount' means —

- (a) if the return is for a return period of one month — \$50,000; and
 - (b) if the return is for a return period of 2 or more months — the product ascertained by multiplying \$50,000 by the number of months in that return period;";
- (b) by omitting from subsection (2) ", reduced by \$2 for each \$3 (disregarding any remainder) by which the amount of those taxable wages (in whole dollars) exceeds the prescribed amount"; and
 - (c) by omitting from subsection (3) ", reduced by \$2 for each \$3 (disregarding any remainder) by which the amount of those taxable wages (in whole dollars) exceeds the same proportion of the prescribed amount".

9. Exemption from tax

Section 9 of the Principal Act is amended—

- (a) by omitting from paragraph (g)(ii) "dominions; or" and substituting "dominions;";
- (b) by omitting from paragraph (h) "Foundation." and substituting "Foundation; or"; and
- (c) by adding at the end the following:
 - "(j) by an employer —
 - (i) to a class of employees;

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- (ii) for services; or
 - (iii) in circumstances,
- that are prescribed by the Regulations."

10. Annual adjustments

Section 10A of the Principal Act is amended –

- (a) by omitting the formula set out in the definition of "prescribed amount" in subsection (1) and substituting the following:

"

$$\frac{TW}{TW + IW} \left[\frac{600,000C}{D} \right]$$

"; and

- (b) by inserting before subsection (2)(a) the following:

"(aa) the Commissioner may, where the amount of tax paid or payable by the employer when the employer made the returns relating to the financial year is greater than the annual amount of tax in relation to that employer for that financial year, refund or rebate to the employer an amount equal to the difference, reduced by any amount refunded to the employer under section 20;"

11. Arrangements for avoidance of tax may be disregarded

Section 11A of the Principal Act is amended by adding at the end the following:

"(3) For the purposes of this section –

- (a) a reference in subsection (1) to the making of a payment to a person related to or connected with a natural person includes the provision of a fringe benefit or prescribed benefit to the person related to or connected with the natural person; and
- (b) the value of a fringe benefit or prescribed benefit so provided is to be taken to be the value that, by virtue of section 3B or 3C, the benefit would have been taken to have if it had been provided to the natural person by the person deemed to be an employer under subsection (1)(b).

"(4) In subsection (3), 'provision' has a meaning that corresponds with the meaning of 'provide' as given in section 136 of the FBTA Act and, without limiting

the generality of paragraph (a) of the definition of 'provide' as given in that section, includes the meaning given in section 154 of that Act."

12. Registration

Section 12 of the Principal Act is amended –

- (a) by omitting from subsection (1) "during the month commencing on the commencing date or during any subsequent month" and substituting "during any month"; and
- (b) by omitting from subsections (1) and (1B) "\$9,950" and substituting "\$11,480".

13. Returns

Section 13 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) Where the taxable wages that were paid or payable by an employer during a month include fringe benefits that are to be taken to have been paid or payable in that month, the value of those benefits to be included in the return is to be calculated in accordance with the Regulations."

14. Designated group employer

Section 17J of the Principal Act is amended –

- (a) by inserting after subsection (1) the following:

"(1A) If the members of a group do not designate a member to be the designated group employer in respect of the group in accordance with subsection (1), the Commissioner may exercise in respect of the group the powers of designation and nomination conferred on members of the group by that subsection.

"(1B) A designation and nomination by the Commissioner under subsection (1A)–

- (a) is to be in writing served on the member of the group who the Commissioner designates as the designated group employer; and
 - (b) has the same effect and gives rise to the same consequences as if it were a designation and nomination by the members of the group in accordance with subsection (1).";
- (b) by inserting after subsection (2) the following:

"(2A) Where the Commissioner has exercised the powers conferred on him or her by subsection (1A) in respect of a group, the Commissioner –

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- (a) may, in writing served on the designated group employer, revoke the designation in respect of the group; and
- (b) may further exercise the powers of designation and nomination conferred on the Commissioner under subsection (1A) in respect of the group."; and
- (c) by omitting from subsection (3) "subsection (1)" and "on the Commissioner" and substituting "subsection (1) or (1A)" and "on or by the Commissioner, as the case may be,", respectively.

15. Annual adjustments

Section 17K of the Principal Act is amended –

- (a) by omitting the formula set out in the definition of "prescribed amount" in subsection (2) and substituting the following:

"

$$\frac{TW}{TW + IW} \left[\frac{600,000C}{D} \right]$$

"; and

- (b) by inserting after subsection (4) the following:

"(4A) Where the actual amount of tax paid or payable in respect of a financial year by the members of a group is greater than the annual amount of tax in relation to those members for that financial year, the Commissioner may refund or rebate to the person who was the designated group employer in respect of that group on 30 June in that financial year an amount equal to the difference, reduced by the total of any amounts refunded to any member of the group under section 20 in respect of the tax paid or payable by any such member when returns relating to that year were made or required to be made under this Act by that member."

16. Adjustment when members of group cease to pay taxable wages or interstate wages

Section 17L of the Principal Act is amended by omitting from subsection (5) "Section 17K(5) and (6)" and substituting "Section 17K(4A), (5) and (6)".

17. Liquidator to give notice

Section 26 of the Principal Act is amended by omitting from subsection (4) "\$100" and substituting "50 penalty units".

18. Offences

Section 37 of the Principal Act is amended –

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- (a) by omitting subsection (1) and substituting the following:

"(1) A person who fails or neglects duly to furnish a return or information, or to comply with a requirement of the Commissioner, as and when required by or under this Act or the Regulations is guilty of an offence punishable, on being found guilty, by a fine not exceeding 50 penalty units.

"(1A) A person who, without just cause shown by the person, refuses or neglects –

- (a) to attend and give evidence when required by the Commissioner or an officer duly authorised by the Commissioner;
- (b) to answer truly and fully any questions put to the person by the Commissioner or any such officer; or
- (c) to produce a book, document or paper required of the person by the Commissioner or any such officer,

is guilty of an offence punishable, on being found guilty, by a fine not exceeding 50 penalty units.

"(1B) A person who –

- (a) furnishes a return that is false in a material particular; or
- (b) makes a false answer, whether orally or in writing, to a question put to the person by the Commissioner or an officer authorised by the Commissioner,

is guilty of an offence punishable, on being found guilty, by a fine not exceeding 100 penalty units.";

- (b) by omitting from subsection (2) "subsection (1)(c)" and substituting "subsection (1B)"; and
- (c) by inserting after subsection (2) the following:

"(2A) A person who contravenes a provision of this Act for the contravention of which no penalty is expressly provided is guilty of an offence punishable, on being found guilty, by a fine not exceeding 50 penalty units."

19. False declarations

Section 39 of the Principal Act is amended by omitting "4 years" and substituting "2 years".

20. Avoiding tax

Section 40 of the Principal Act is amended by omitting "\$1,000" and substituting "100 penalty units".

21. Time for commencing prosecutions

Section 41 of the Principal Act is amended by omitting from subsection (2) "section 37(1)(a) or (c)" and substituting "section 37(1) or (1B)".

22. Obstructing persons

Section 43 of the Principal Act is amended by omitting "\$100" and substituting "imprisonment for 2 years".

23. How instituted

Section 45 of the Principal Act is amended by omitting "\$1,000 or the excess is abandoned" and substituting "50 penalty units".

24. Defendant to have right to trial in Supreme Court

Section 47 of the Principal Act is amended by omitting "\$200 and the excess is not abandoned" and substituting "50 penalty units".

25. Repeal

Sections 55 and 56 of the Principal Act are repealed.

26. Public officer of company

Section 58 of the Principal Act is amended by omitting from subsection (3) "\$10 for every day during which the failure continues" and substituting "50 penalty units and an additional penalty of 0.1 penalty units for each day that the failure continues after the first day on which the failure occurred".

27. Books, accounts etc. to be preserved

Section 61 of the Principal Act is amended by omitting from subsection (1) "\$200" and substituting "100 penalty units".

28. Regulations

Section 64 of the Principal Act is amended by omitting from subsection (1) "\$100" and substituting "50 penalty units".

29. New schedule

The Principal Act is amended by adding at the end the following:

**"SCHEDULE
PROVISIONS ABOUT SUPERANNUATION**

Section 3A

1. What this schedule is about

For the purposes of section 3A, this schedule sets out –

- (a) certain amounts that are to be taken to be contributions paid or payable by an employer in respect of a person to a superannuation fund; and
- (b) certain contributions paid or payable by an employer in respect of a person to a superannuation fund that are not to be taken to be superannuation benefits.

2. Definitions

- (1) In this schedule –

'actuary' means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

'Australian superannuation scheme' means a superannuation scheme that –

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

'defined benefit' means a benefit under a superannuation scheme that is defined (wholly or in part) by reference to either or both of the following:

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

'individual superannuation guarantee shortfall' has the meaning given in the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

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'participant', in relation to a superannuation scheme, means a person in respect of whom the scheme provides benefits that are or are to be funded to any extent by an employer's contributions under the scheme;

'regulated superannuation fund' has the meaning given in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

'superannuation guarantee charge' means a charge imposed by the *Superannuation Guarantee Charge Act 1992* of the Commonwealth but does not include an additional superannuation guarantee charge under Part 7 of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

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

(2) Setting aside money or anything worth money as or as part of a superannuation scheme is to be taken to be paying it as a contribution to the superannuation fund.

(3) Making a contribution to a superannuation fund of anything that is worth money is to be taken to be paying a contribution of the amount of money that it is worth and, for the purpose of determining that worth, section 3(4) applies as if references in that provision to taxable wages were references to contributions.

(4) If an amount by way of administration or other charges in respect of the carrying on of a superannuation fund is paid other than to the fund, the amount is to be taken to be paid as a contribution to the fund.

(5) If in a return period a person becomes obliged but fails to do anything that, if it were done, would by virtue of subclause (2), (3) or (4) be taken to be paying a contribution to a superannuation fund, the contribution to the superannuation fund is to be taken to be payable in the return period.

(6) A contribution to a superannuation fund paid or payable by a person acting for or in concert with or under an arrangement or undertaking, whether formal or informal and whether express or implied, with an employer is to be taken to be paid or payable by the employer.

(7) Contributions to a superannuation fund that are to be taken by this schedule to be paid or payable by an employer are cumulative upon one another,

and upon contributions that are actually paid or payable, unless it is otherwise provided.

3. Australian scheme: unregulated defined benefit scheme or unfunded public sector defined benefit scheme

(1) This clause applies in relation to an Australian superannuation scheme –

(a) that –

(i) is not a regulated superannuation fund; or

(ii) is an unfunded public sector scheme, whether or not it is a regulated superannuation scheme; and

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

(2) A contribution is to be taken to be payable by the employer to the superannuation fund concerned in the return period in respect of each participant.

(3) The amount of the contribution in respect of a participant is –

(a) the amount that an actuary determines would be sufficient, together with earnings on the amount, to fully provide for the cost to the employer of the entitlement accruing under the scheme to benefits in respect of services performed or rendered by the participant in the return period; or

(b) if the Regulations prescribe how the amount of a contribution in respect of a class of participants of which the participant is a member is to be determined – the amount so determined.

(4) The Regulations may provide for how an actuary is to determine an amount under subclause (3).

(5) If by virtue of subclause (2) a contribution by the employer under a scheme is to be taken to be payable to the superannuation fund concerned, no other contribution by the employer to the fund is to be taken to be a superannuation benefit unless –

(a) it is a contribution that the employer is to be taken to pay by virtue of clause 5; or

(b) the contribution is made for any reason other than to make provision for the cost referred to in subclause (3).

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

(1) This clause applies in relation to an Australian superannuation scheme –

(a) that –

(i) is not a regulated superannuation fund; and

(ii) does not provide for a defined benefit in respect of a person; and

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

(2) An amount that a person is obliged to but does not credit in a return period is to be taken to be credited in the return period and not at any other time.

(3) An amount –

(a) paid or payable as a contribution under the scheme; or

(b) that is to be taken (other than by virtue of subclause (4)) to be paid or payable as a contribution under the scheme,

is excluded from the amount referred to in subclause (1)(b).

(4) A contribution of the amount mentioned in subclause (1)(b) is to be taken to be payable by the employer to the superannuation fund concerned in the return period in respect of each participant.

(5) If by virtue of subclause (4) an amount credited as an employer's contribution under a scheme is to be taken to be payable to the fund concerned, to the extent that it is paid to meet (wholly or in part) an obligation arising from the credit, no contribution under the scheme is to be taken to be a superannuation benefit.

5. Superannuation guarantee charge

(1) If a superannuation guarantee charge payable by an employee is imposed in a return period, a contribution of the amount of the charge is to be taken to be payable by the employer to a superannuation fund in the return period.

(2) If the charge is imposed because of only one individual superannuation guarantee shortfall, the contribution is to be taken to be in respect of the person in respect of whom the employer has the shortfall.

(3) If the charge is imposed because of an individual superannuation guarantee shortfall in respect of each of 2 or more persons, the contribution is to be taken to be in respect of each of them and to be apportioned according to the amount of the employer's individual superannuation guarantee shortfall in respect of each of them.

(4) If—

(a) a contribution that was payable but which the employer failed to pay in respect of a person is to be taken to be a superannuation benefit; and

(b) the charge is imposed wholly or in part because of an individual superannuation guarantee shortfall that results wholly or in part from the failure,

the amount of the contribution that is to be taken to be payable in respect of the person is reduced by the amount of the contribution referred to in paragraph (a).

(5) An amount cannot be reduced by virtue of subclause (4) to less than 0.

6. Treatment of certain contributions

(1) A contribution in respect of services performed or rendered before 1 July 1999 is not to be taken to be a superannuation benefit.

(2) If a contribution is partly in respect of services performed or rendered before 1 July 1999, the part that is in respect of services performed or rendered before that date is not to be taken to be a superannuation benefit.

(3) For the purposes of this clause, a contribution is in respect of services performed or rendered before 1 July 1999 to the extent that the payment of the contribution is attributable to, or is to satisfy a benefit attributable to, a period of service before 1 July 1999.

(4) The Regulations may make provision in relation to—

(a) whether, or the extent to which, a contribution is paid or payable to a superannuation fund in respect of a particular person; or

(b) whether, or to the extent to which, the payment of a contribution to a superannuation fund is attributable, or is to satisfy a benefit attributable, to a period of service before 1 July 1999."

30. Saving

Despite any provision in the Principal Act as amended by this Act and any regulations made under that Act, section 20A(5) of the Principal Act as in force

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before the commencement of this Act continues to apply in relation to a repayment of tax paid in respect of a financial year ending on or before 30 June 1999.

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