

LEGISLATIVE ASSEMBLY

Read 1° 26 October 1983

(Brought in by Mr. Jolly and Mr. Fordham)

(No. 2)

A BILL

To amend the *Pay-roll Tax Act 1971* and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. This Act may be cited as the *Pay-roll Tax (Amendment) Act 1983*. Short title.

2. In this Act the *Pay-roll Tax Act 1971* is called the Principal Act. Principal Act No. 8154.
Reprinted to No. 9059.
Subsequently amended by Nos. 9192, 9305, 9427, 9440, 9647, 9699, 9733, 9766 and 9837.

3. (1) Subject to sub-section (2), this Act shall come into operation Commencement.
10 on 1 January 1984.

(2) Section 6 shall be deemed to have come into operation on 1 January 1983.

(3) The Principal Act as amended by sections 4, 5, 7, 9 and 11 of this Act applies to and in relation to the assessing, charging, levy and

collection of pay-roll tax on taxable wages paid or payable on or after 1 January 1984.

(4) The Principal Act as in force from time to time before 1 January 1984 applies to and in relation to the assessing, charging, levy and collection of pay-roll tax on taxable wages paid or payable before 1 5 January 1984.

Amendment of
No. 8154 s. 3.
Interpretation—
wages.

4. (1) In paragraph (e) of the interpretation of "Wages" in section 3 (1) of the Principal Act for the words "premises or quarters" there shall be substituted the words "quarters or the provision of accommodation".

(2) Section 3 (2) of the Principal Act shall be amended as follows: 10

(a) For the words "One dollar fifty cents" there shall be substituted the expression "\$20";

(b) The words "premises or" shall be repealed;

(c) For the words "fifty cents" there shall be substituted the expression "\$15"; 15

(d) At the end of the sub-section there shall be inserted the expression "and the provision of accommodation shall be deemed to have a value of \$50 per week or, in any particular case or class of cases, such other value as is prescribed in respect of that case or class of cases". 20

Amendment of
No. 8154 s. 3.
Expanded
interpretations of
"employee" and
"wages".

5. Section 3 (1) of the Principal Act shall be amended as follows:

(a) In the interpretation of "employer" after the words "State of Victoria" there shall be inserted the expression ", any person deemed to be an employer by section 3C or 3D"; and

(b) In the interpretation of "wages"— 25

(i) after the words "to or in relation to an employee as such" there shall be inserted the expression "or to or in relation to any person deemed by section 3C or 3D to be an employee"; and

(ii) after paragraph (b) there shall be inserted the following 30 paragraph:

"(ba) any amount deemed to be wages by section 3C or 3D;"

6. After section 3B (9) of the Principal Act there shall be inserted the following sub-section: 35

"(10) Notwithstanding anything to the contrary in the foregoing provisions of this section, the provision of a motor vehicle by an employer to or in relation to any employee where—

(a) the employer is a licensed motor car trader within the meaning of the *Motor Car Traders Act 1973*; and 40

- (b) the motor vehicle forms part of the employer's stock held for sale in the course of his business as a licensed motor car trader—

5 is not for the purposes of this Act a benefit included in the wages paid or payable by an employer to or in relation to an employee.”.

7. After section 3B of the Principal Act there shall be inserted the following sections:

Amendment of
No. 8154.
New sections
inserted.

10 '3C. (1) For the purposes of this section, a reference to a relevant contract in relation to a financial year is a reference to a contract under which a person during that financial year, in the course of a business carried on by him—

- (a) supplies to another person services for or in relation to the performance of work;
- 15 (b) has supplied to him the services of persons for or in relation to the performance of work; or
- (c) gives out goods to natural persons for work to be performed by those persons in respect of those goods and for re-supply of the goods to the first-mentioned person or, where that person is a member of a group within the meaning of section 20 9A, to another member of that group—

but does not include a reference to a contract of service or a contract under which a person during a financial year in the course of a business carried on by him—

- 25 (d) has supplied to him services for or in relation to the performance of work that are only incidental to the supply of goods under the contract by the person by whom the services are supplied or to the use of goods which are the property of that second-mentioned person; or
- 30 (e) has supplied to him services for or in relation to the performance of work where—
- (i) those services are of a kind not ordinarily required by that person and are rendered by a person who ordinarily renders services of that kind to the public generally;
- 35 (ii) those services are of a kind ordinarily required by that person for less than 180 days in that financial year;
- (iii) those services are provided for a period which does not exceed 90 days or for periods that, in the aggregate, do not exceed 90 days in that financial year;
- 40 (iv) the payment of the consideration under the contract is made at a rate that is not less than \$500 000 per annum; or
- (v) those services are of a kind ordinarily required by that person—
- 45 (A) for not less than 180 days in that financial year; and

- (B) are provided under the contract for a period of not less than 90 days or for periods that, in the aggregate, are not less than 90 days in that financial year—
- and the payment of the consideration under the contract is made at a rate not exceeding \$500 000 per annum and the Commissioner is satisfied that those services are rendered by a person who ordinarily renders services of that kind to the public generally. 5
- (2) For the purposes of this Act— 10
- (a) a person—
- (i) who during a financial year under a relevant contract supplies services to another person;
- (ii) to whom during a financial year, under a relevant contract, the services of persons are supplied for or in relation to the performance of work; or 15
- (iii) who during a financial year, under a relevant contract, gives out goods to other persons—
- shall be deemed to be an employer in respect of that financial year; 20
- (b) a person who during a financial year—
- (i) performs work for or in relation to which services are supplied to another person under a relevant contract; or
- (ii) being a natural person, under a relevant contract, re-supplies goods to an employer— 25
- shall be deemed to be an employee in respect of that financial year; and
- (c) amounts paid or payable by an employer during a financial year for or in relation to the performance of work relating to a relevant contract or the re-supply of goods by an employee under a relevant contract shall be deemed to be wages paid or payable during that financial year. 30
- (3) Where a contract is a relevant contract pursuant to both sub-sections (1) (a) and (1) (b)— 35
- (a) the person to whom, under the contract, the services of persons are supplied for or in relation to the performance of work shall be deemed to be an employer; and
- (b) notwithstanding sub-section (2) (a) (i) the person who under the contract supplies the services shall not be deemed to be an employer. 40
- (4) Where—
- (a) a contract under which a person in the course of a business carried on by him supplies to another person services for or

in relation to the performance of work would, but for sub-section (1) (e) (iv), be a relevant contract; and

- 5 (b) contracts under which the first-mentioned person in the course of the same business has supplied to him the services of persons for or in relation to the performance of work would, but for sub-section (1) (e) (ii) or (iii) be relevant contracts—

10 the Commissioner may, unless the first-mentioned person satisfies him that the business is carried on independently of, and is not connected with, the carrying on of a business carried on by another person or other persons and that the business is not carried on with an intention either directly or indirectly of avoiding or evading the payment of tax whether by the first-mentioned person or another person, by notice in writing given to the first-mentioned person determine that the contracts referred to in paragraph (b) are relevant contracts notwithstanding sub-section (1) (e) (ii) and (iii).

15 (5) Where, in respect of a payment for or in relation to the performance of work that is deemed to be wages under this section, pay-roll tax is paid by a person deemed under this section to be an employer, no other person shall be liable to pay-roll tax in respect of that or any other payment made for or in relation to the performance of that work.

(6) In this section—

- 25 (a) a reference to a contract includes a reference to an agreement, arrangement or undertaking, whether formal or informal and whether express or implied;
- 30 (b) a reference to supply includes a reference to supply by way of sale, exchange, lease, hire or hire-purchase, and in relation to services includes a reference to the providing, granting or conferring of services;
- (c) a reference to the re-supply of goods acquired from a person includes a reference to—
- 35 (i) a supply to the person of goods in an altered form or condition; and
- (ii) a supply to the person of goods in which the first-mentioned goods have been incorporated;
- (d) a reference to services includes a reference to results (whether goods or services) of work performed;
- 40 (e) subject to paragraph (f), a reference to a financial year is a reference to the period commencing on 1 January 1984 and ending on 30 June 1984 and each year thereafter commencing on 1 July; and
- 45 (f) where, but for this paragraph, a reference in paragraph (e) of sub-section (1) to a financial year would be a reference to the period commencing on 1 January 1984 and ending on

30 June 1984, that reference is a reference to the year commencing on 1 July 1983.

Certain franchise schemes to be treated as contracts of service.

3D. (1) For the purposes of this section—

“Franchise scheme” means a scheme involving a continuing business relationship between two or more persons under which one of those persons (in this sub-section called “the relevant participant”) is by himself or another person authorized or required under the scheme to sell goods or services or to provide services or to arrange insurance (otherwise than exclusively from business premises occupied by the relevant participant but not being his principal place of residence) or to perform any contract for the carriage of goods which has been entered into under the scheme by another participant in the scheme (whether or not one or more other participants in the scheme is or are so authorized or is or are required to do any such acts) and—

(a) another participant in the scheme—

(i) exerts or has the right to exert an influence over the relevant participant in relation to his activities under the scheme; or

(ii) assists or supports the relevant participant in carrying on his activities under the scheme; or

(b) the nature and operation of the scheme results in the activities of the relevant participant being commonly identified with another participant in the scheme or the business of another participant in the scheme—

but does not include a contract of service.

“Nominated promoter” means a promoter who is registered, nominated or appointed pursuant to this section.

“Promoter” in relation to a franchise scheme means a participant in the scheme—

(a) who exerts or has the right to exert an influence over the relevant participant in relation to his activities under the scheme; or

(b) who assists or supports the relevant participant in carrying on his activities under the scheme.

“Sell” includes—

(a) offer or expose for sale;

(b) keep or have in possession for sale; and

(c) send, forward or deliver for or on sale.

(2) In this section, a reference to sell, arrange or perform includes a reference to agree or attempt to sell, arrange or perform or to authorize, direct, suffer or permit another person to sell, arrange or perform.

(3) Where there is not more than one promoter of a franchise scheme—

5 (a) the promoter shall apply to the Commissioner in the prescribed form and manner for registration as the nominated promoter and the Commissioner shall then register him as the nominated promoter of the scheme under this Act; and

10 (b) where the promoter fails to apply for registration pursuant to paragraph (a) he shall be liable to a penalty of 50 penalty units.

(4) Where in relation to any franchise scheme there is more than one promoter of that scheme—

(a) those promoters—

15 (i) shall nominate one of their number as the nominated promoter for the purposes of this Act; and

20 (ii) shall give to the Commissioner notice in writing of the name of the person so nominated and of the persons by whom the nomination was made and the Commissioner shall register the person so nominated as the nominated promoter for the purposes of this Act; and

(b) where any promoter is under a duty to give notice to the Commissioner pursuant to paragraph (a) and fails to do so, he shall be liable to a penalty of 50 penalty units.

25 (5) A nomination under sub-section (4) shall be deemed to be a nomination in respect of a franchise scheme notwithstanding that at the time the nomination is made, one or more of the promoters referred to in sub-section (4) do not join in making the nomination and continues to be a nomination in respect of the scheme notwithstanding that the
30 identity of the promoters alters.

(6) Where any person who is under a duty to apply for registration or give notice to the Commissioner pursuant to sub-section (3) or (4) fails to do so, the Commissioner shall appoint one of the participants in the scheme as the nominated promoter of the scheme.

35 (7) A person registered nominated or appointed as promoter of a franchise scheme pursuant to this section shall continue as nominated promoter for the purposes of this Act until—

40 (a) in the case of a person registered under sub-section (3) or nominated under sub-section (4) notice of the registration or nomination under sub-section (3) or (4) of another promoter in the scheme is given to the Commissioner, being a notice that includes a revocation of the registration or nomination of the first-mentioned person; or

45 (b) the Commissioner revokes the registration nomination or appointment of that nominated promoter and appoints

another participant in the scheme as the nominated promoter of the scheme for the purposes of this Act.

(8) Where the Commissioner appoints, or revokes the registration nomination or appointment of, a person as nominated promoter pursuant to this section, he shall give notice of the appointment or revocation. 5

(9) For the purposes of this Act—

- (a) the nominated promoter of a franchise scheme shall be deemed to be an employer;
- (b) each participant in a franchise scheme (other than the nominated promoter) shall be deemed to be an employee; 10
- (c) any amount—
 - (i) paid or payable by the nominated promoter of a franchise scheme to or in relation to a participant in the scheme; or 15
 - (ii) received or receivable by a participant in a franchise scheme (other than the nominated promoter)—

for his participation in the scheme shall be deemed to be wages, and shall be deemed to have been paid or be payable by the nominated promoter. 20

(10) Where a motor vehicle used for the purposes of a franchise scheme is provided by a participant in the scheme as a condition of his participation in the scheme, the Commissioner may, on application made to him by the nominated promoter of the scheme, determine that an amount that, under sub-section (9) (c), is to be deemed to be wages paid or payable by the nominated promoter to the participant shall be reduced by 20 per centum or such higher proportion as the Commissioner determines having regard to the value of the motor vehicle and any other relevant information. 25

(11) Where in respect of an amount paid or payable to or received or receivable by a participant under a franchise scheme that under this section is to be deemed to be wages, pay-roll tax is paid by a person deemed under this section to be an employer, no other person shall be liable to pay pay-roll tax in respect to that or any other amount paid or payable to or received or receivable by the participant in relation to the activities carried out by the participant under the scheme to which the first-mentioned amount applies. 30 35

8. In section 7 of the Principal Act—

- (a) for the expression “7. Subject to,” there shall be substituted the expression “7. (1) Subject to,”; and 40
- (b) at the end of the section there shall be inserted the following sub-section:

“(2) Where, during a month after the month of June 1984, the amount of taxable wages paid or payable by an

employer is \$83 334 or more, the rate at which pay-roll tax shall be charged, levied and collected in respect of those wages is 6 per centum.”.

9. (1) In section 9A (3A) of the Principal Act, for paragraph (ga) there shall be substituted the following paragraph:

Amendment of
No. 8154.
Exemption level
and reduction
amount.

(ga) for sub-sections (2A), (2B) and (2C) of section 11A there were substituted the following sub-sections:

“(2A) For the purposes of the financial year commencing on 1 July 1983, a reference in sections 11B and 11C to the prescribed amount is, in relation to the members of a group within the meaning of section 9A, a reference to the prescribed amount calculated for those purposes in relation to such members in accordance with Part B of Schedule One.

(2B) For the purposes of the financial year commencing on 1 July 1984 and each financial year thereafter, a reference in sections 11B and 11C to the prescribed amount is, in relation to the members of a group within the meaning of section 9A, a reference to the prescribed amount calculated for those purposes in relation to such members in accordance with Part B of Schedule Two.

(2C) For the purposes of the financial year commencing on 1 July 1984 and each financial year thereafter, a reference in sections 11B and 11C to the reduction amount is, in relation to the members of a group within the meaning of section 9A, a reference to the reduction amount calculated for those purposes in relation to such members in accordance with Schedule Eight.”.

(2) In section 9B (1) of the Principal Act in the interpretation of “prescribed amount”—

- (a) for the expression “1983” (where twice occurring) there shall be substituted the expression “1984”;
- (b) for the expression “ \$10 416” (where three times occurring) there shall be substituted the expression “\$11 666”;
- (c) for the expression “\$11 666” (where three times occurring) there shall be substituted the expression “\$16 666”;
- (d) for the expression “1982” there shall be substituted the expression “1983”.

(3) In section 11A of the Principal Act—

- (a) in sub-section (2A) for the expression “1982” there shall be substituted the expression “1983”;
- (b) in sub-section (2B) for the expression “1983” there shall be substituted the expression “1984”; and

(c) after sub-section (2B) there shall be inserted the following sub-section:

“(2C) For the purposes of the financial year commencing on 1 July 1984 and each financial year thereafter, a reference in sections 11B and 11C to the reduction amount is a reference to the reduction amount calculated for those purposes in accordance with Schedule Seven.”

(4) In section 11B of the Principal Act for sub-section (1) there shall be substituted the following sub-section:

Annual adjustments.

‘11B. (1) In this section “annual amount of pay-roll tax”, in relation to an employer, means—

- (a) subject to paragraph (b)—the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 7 (1) to the difference between—
 - (i) the total of the taxable wages paid or payable by that employer during a financial year; and
 - (ii) the prescribed amount; and
- (b) where, in respect of the financial year commencing on 1 July 1984 or a subsequent financial year, the total of the taxable wages paid or payable by that employer is \$1 000 000 or more—the amount ascertained by applying the rate of 6 per centum to the difference between—
 - (i) the total of the taxable wages paid or payable by that employer during the financial year; and
 - (ii) the prescribed amount— less the reduction amount.’

(5) In section 11C (1) of the Principal Act for the interpretation of “total amount of pay-roll tax” there shall be substituted the following interpretation:

“total amount of pay-roll tax” in relation to an employer, means—

- (a) subject to paragraph (b)—the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 7 (1) to the difference between—
 - (i) the total of the taxable wages paid or payable by that employer during a prescribed period; and
 - (ii) the prescribed amount; and
- (b) where, in respect of the financial year commencing on 1 July 1984 or a subsequent financial year, the total of the taxable wages paid or payable by that employer during a prescribed period is equal to or more than the amount that bears the same proportion to \$1 000 000 as the prescribed period bears to the whole of the financial year—the amount ascertained by applying the rate of 6 per centum to the difference between—

- (i) the total of the taxable wages paid or payable by that employer during the prescribed period; and
- (ii) the prescribed amount—
less the reduction amount.”’

- 5 (6) In section 12 of the Principal Act—
- (a) in sub-section (1) for the expression “\$2690” there shall be substituted the expression “\$3840”;
 - (b) in sub-section (2A) for the expression “\$2690” there shall be substituted the expression “\$3840”.
- 10 (7) In Part A of Schedule One to the Principal Act—
- (a) for the expression “1982” (where three times occurring) there shall be substituted the expression “1983”;
 - (b) for the expression “62 500A” (where twice occurring) there shall be substituted the expression “70 000A”;
 - 15 (c) for the expression “70 000B” (where twice occurring) there shall be substituted the expression “100 000B”;
 - (d) for the expression “1983” (where twice occurring) there shall be substituted the expression “1984”.
- 20 (8) In Part B of Schedule One to the Principal Act—
- (a) for the expression “1982” (where three times occurring) there shall be substituted the expression “1983”;
 - (b) for the expression “1983” (where twice occurring) there shall be substituted the expression “1984”.
- 25 (9) In Part A of Schedule Two to the Principal Act—
- (a) for the expression “1983” there shall be substituted the expression “1984”;
 - (b) for the expression “140,000c” (where twice occurring) there shall be substituted the expression “200 000c”;
- 30 (10) In Part B of Schedule Two to the Principal Act for the expression “1983” there shall be substituted the expression “1984”.

10. In section 16 (1) of the Principal Act for all the words and expressions after paragraph (b) there shall be substituted the following words and expressions:

“for the purpose of—

- 35 (c) inquiring into or ascertaining his or any other person’s liability or entitlement under any of the provisions of this Act; or
- (d) ascertaining for the purposes of this Act the identity of any person who—
- 40 (i) may have a liability or entitlement under any of the provisions of this Act; or

(ii) may, by reason of being related to or associated or connected with another person, affect the liability or entitlement of that other person—

and may require him to produce all books documents and other papers whatsoever in his custody or under his control relating thereto.”

Amendment of No. 8154. New Schedules Seven and Eight.

Section 11A.

11. After Schedule Six to the Principal Act there shall be inserted the following Schedules:

“SCHEDULE SEVEN

The reduction amount referred to in section 11A is the amount calculated in accordance with the formula—

$$\frac{TW}{TW + IW} \left[\frac{9622C}{365} - \frac{1}{10} \left((TW + IW) - \frac{1\,000\,000C}{365} \right) \right]$$

Where—

TW is the total of the taxable wages paid or payable by the employer otherwise than as a member of a group during that financial year;

IW is the total of the interstate wages paid or payable by the employer otherwise than as a member of a group during that financial year; and

C is the number of days in respect of which wages (disregarding foreign wages) were paid or payable by the employer otherwise than as a member of a group during that financial year.

Section 9A.

SCHEDULE EIGHT

The reduction amount referred to in section 9A (3A) (ga) is the amount calculated in accordance with the formula—

$$\frac{TW}{TW + IW} \left[\frac{9622C}{365} - \frac{1}{10} \left((TW + IW) - \frac{1\,000\,000C}{365} \right) \right]$$

where—

TW is the total of the taxable wages paid or payable by the members of the group as members of the group during that financial year;

IW is the total of the interstate wages paid or payable by the members of that group as members of that group during that financial year; and

C is the number of days in that financial year in respect of which at least one member of the group paid or was liable to pay wages (disregarding foreign wages) as a member of a group.”