



New South Wales

Pay-roll Tax Regulation 1998

under the
Pay-roll Tax Act 1971

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pay-roll Tax Act 1971*.

MICHAEL EGAN, M.L.C.,
Treasurer

Explanatory note

The object of this Regulation is to repeal and replace the *Pay-roll Tax Regulation 1993*. The new Regulation makes provision with respect to the following matters:

- (a) prescribing motor vehicle allowances as allowances on which pay-roll tax is not payable under a threshold amount, and prescribing the way in which that threshold amount is to be calculated (clause 5),
- (b) prescribing the details to be kept by employers with respect to business journeys for which motor vehicle allowances are paid by them (clauses 6, 7, 8, 9 and 10),
- (c) prescribing accommodation allowances as allowances on which pay-roll tax is not payable under a threshold amount, and prescribing the way in which that threshold amount is to be calculated (clause 11),
- (d) prescribing the purposes for which funds in the Education and Training Foundation Fund may be used (clause 12),
- (e) other matters of a minor, consequential or ancillary nature (clauses 1, 2, 3, 4 and 13).

Under clause 5, the rate per kilometre under which a motor vehicle allowance is exempt from pay-roll tax calculations rises from 45 cents to 53.5 cents. Under clause 11, the rate per night under which an accommodation allowance is exempt from pay-roll tax calculations rises from \$110 to \$130.

1998 No 336

Pay-roll Tax Regulation 1998

Explanatory note

This Regulation is made under the *Pay-roll Tax Act 1971*, including section 51 (the general regulation-making power) and sections 3AA, 31A and 44.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Notes	3
<hr/>	
Part 2 Motor vehicle allowances	
5 Motor vehicle allowances	4
6 Records to be kept	4
7 Continuous recording method	4
8 Averaging method	5
9 Meaning of "relevant 12-week period"	7
10 Replacing one motor vehicle with another motor vehicle	7
<hr/>	
Part 3 Accommodation allowances	
11 Accommodation allowances	8
<hr/>	
Part 4 Miscellaneous	
12 Application of Education and Training Foundation Fund	9
13 Repeal	9

Pay-roll Tax Regulation 1998

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Pay-roll Tax Regulation 1998*.

2 Commencement

This Regulation commences on 1 July 1998.

3 Definitions

In this Regulation:

award means:

- (a) a State industrial agreement within the meaning of the *Industrial Relations Act 1996*, or
- (b) any other agreement with respect to salaries or wages entered into under the provisions of any other law of the State between an employer constituted by that law and an association or organisation representing a group or class of employees, or
- (c) an award, agreement or other instrument under the law of the Commonwealth or of another State or Territory, being an award, agreement or other instrument of a similar nature to an agreement referred to in paragraph (a) or (b).

business journey means:

- (a) a journey undertaken in a motor vehicle by a person otherwise than in the application of the vehicle to a private use, being an application that, if the person is paid a motor vehicle allowance for that use, results in the provision of a fringe benefit (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth) by the employer, or
- (b) a journey undertaken in a motor vehicle by a person in the course of producing assessable income of the person (within the meaning of the *Income Tax Assessment Act 1936* of the Commonwealth).

the Act means the *Pay-roll Tax Act 1971*.

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

1998 No 336

Clause 5 Pay-roll Tax Regulation 1998

Part 2 Motor vehicle allowances

Part 2 Motor vehicle allowances

5 Motor vehicle allowances

- (1) For the purposes of section 3AA (7) of the Act, a motor vehicle allowance is a prescribed allowance.
- (2) For the purposes of section 3AA (7) (b) of the Act, the prescribed rate in relation to a motor vehicle allowance is:
 - (a) in the case of a person paid an allowance under an award that specifies the allowance as a rate for each kilometre or part of a kilometre travelled by the person in the course of the person's employment by means of a motor vehicle provided or maintained by the person—the rate specified in the award, or
 - (h) in the case of any other person—53.5 cents for each kilometre or part of a kilometre travelled by the person in the course of business journeys by means of a motor vehicle provided or maintained by the person.

6 Records to be kept

For the purposes of section 44 (1B) (c) of the Act, the prescribed details to be kept of any motor vehicle allowance paid or payable to a person are:

- (a) the details kept in accordance with the method set out in clause 7 (the *continuous recording method*), or
- (b) the details kept in accordance with the method set out in clause 8 (the *averaging method*),

whichever the employer prefers.

7 Continuous recording method

The continuous recording method requires the following details to be kept:

- (a) the odometer readings at the beginning and end of each business journey undertaken by the person during a financial year by means of a motor vehicle provided or maintained by the person,

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- (b) the specific purpose for which each such business journey was taken,
 - (c) the distance travelled by the person during the financial year in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a).

8 Averaging method

- (1) The averaging method requires the following details to be kept for the first financial year in which an employer chooses to adopt that method:
 - (a) the odometer readings at the beginning and end of each business journey undertaken by the person during the relevant 12-week period by means of a motor vehicle provided or maintained by the person,
 - (b) specific purpose for which each such business journey was taken,
 - (c) distance travelled by the person during the relevant 12-week period in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a),
 - (d) odometer readings at the beginning and end of the relevant 12-week period for each vehicle provided or maintained by the person for the purpose of undertaking business journeys,
 - (e) distance travelled by each such vehicle during the relevant 12-week period. calculated on the basis of the odometer readings referred to in paragraph (d),
 - (f) distance travelled by the person in the course of business journeys undertaken by means of each such vehicle during the relevant 12-week period. calculated as a percentage of the distance travelled by that vehicle during that period,
 - (g) distance travelled by the person in the course of business journeys undertaken by means of each such vehicle during the financial year, calculated on the basis that the percentage for each such vehicle for the financial year is the same as the percentage for that vehicle for the relevant 12-week period.

1998 No 336

Clause 8 Pay-roll Tax Regulation 1998

Part 2 Motor vehicle allowances

- (2) After the first financial year in which odometer details are recorded in accordance with subclause (1), the calculation referred to in subclause (1) (g) is to be employed for the purpose of calculating the distance travelled by the person in the course of business journeys undertaken by means of each vehicle referred to in subclause (1) during each of the next succeeding 4 financial years, calculated on the basis that the percentage for each such vehicle for the financial year concerned is the same as the percentage for that vehicle for the relevant 12-week period.
- (3) After the first financial year in which odometer details are recorded in accordance with subclause (1), an employer is not required to record the details referred to in that subclause for the person for the next succeeding 4 financial years unless:
 - (a) the Chief Commissioner serves a notice on the employer before the commencement of a financial year during that period directing the employer to keep the details referred to in subclause (1) for that financial year, or
 - (b) the employer wishes to use the recording method referred to in this clause for one or more additional motor vehicles used by the person in any financial year or for any other reason.
- (4) In a situation referred to in subclause (3) (b), an employer may make a new record of odometer readings for a financial year in accordance with subclause (1) to replace the details previously recorded for the person. The provisions of subclause (3) then apply in relation to the new record.
- (5) An employer who has adopted and employed the method of recording referred to in this clause for a person for 4 successive financial years must, in the next succeeding financial year, make a fresh recording of the details specified in subclause (1) if the employer intends to continue to use the same method of recording for the person.
- (6) If the odometer of a motor vehicle is replaced or recalibrated during any period for which its readings are relevant for the purposes of this clause, the odometer readings immediately before and after the replacement or recalibration are to be recorded.

- (7) For the purposes of making the calculation referred to in subclause (1) (g) for the financial year in which this clause commences, an employer may estimate the distance travelled by a motor vehicle during any part of that financial year that occurs before that commencement.

9 Meaning of “relevant 12-week period”

- (1) In clause 8, *relevant 12-week period* means a continuous period of at least 12 weeks, selected by the employer, throughout which a motor vehicle is provided or maintained by a person. If the motor vehicle is provided or maintained for less than 12 weeks, the period must be the entire period for which the motor vehicle is provided or maintained.
- (2) The period may overlap the start or end of the financial year, so long as it includes part of the year.
- (3) If the averaging method is used for 2 or more motor vehicles for the same financial year, the odometer readings for those motor vehicles must cover periods that are concurrent.

10 Replacing one motor vehicle with another motor vehicle

- (1) For the purposes of using the averaging method, an employer may nominate one motor vehicle as having replaced another motor vehicle with effect from a day specified in the nomination.
- (2) After the nomination takes effect, the replacement motor vehicle is treated as the original motor vehicle, and the original motor vehicle is treated as a different motor vehicle. An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.
- (3) An employer must record the nomination in writing in the financial year in which the nomination takes effect.
- (4) However, the Chief Commissioner may allow an employer to record the nomination at a later time.
- (5) A nomination made for the purposes of this clause is a prescribed detail to which section 44 (1B) (c) of the Act applies.

1998 No 336

Clause 11 Pay-roll Tax Regulation 1998

Part 3 Accommodation allowances

Part 3 Accommodation allowances

11 Accommodation allowances

- (1) For the purposes of section 3AA (7) of the Act, an accommodation allowance is a prescribed allowance.
- (2) For the purposes of section 3AA (7) (b) of the Act, the prescribed rate in relation to an accommodation allowance is:
 - (a) in the case of a person paid an allowance under an award that specifies the allowance as a rate for each night the person is absent from the person's usual place of residence—the rate specified in the award, or
 - (b) in the case of any other person—\$130 for each night the person is absent from the person's usual place of residence in the course of the person's employment.

Part 4 Miscellaneous

12 Application of Education and Training Foundation Fund

For the purposes of section 31A of the Act, the funds in the Education and Training Foundation Fund may be used for any one or more of the following purposes:

- (a) to benefit a public university,
- (b) to benefit a public fund for the establishment of a public university,
- (c) to benefit a higher educational institution within the meaning of the *Employment, Education and Training Act 1988* of the Commonwealth,
- (d) to benefit a residential educational institution established by the Commonwealth or affiliated with a public university,
- (e) to benefit public education (including providing benefits to primary and secondary institutions),
- (f) to benefit a public fund for the acquisition, construction or maintenance of a building used or to be used as a school or college,
- (g) to benefit a private educational institution,
- (h) for the purposes of an industry training scheme.

13 Repeal

- (1) The *pay-roll Tax Regulation 1993* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Pay-roll Tax Regulation 1993*, had effect under that Regulation continues to have effect under this Regulation.