



# Pay-roll Tax Amendment (Trust Distributions) Regulation 2003

under the

Pay-roll Tax Act 1971

Her 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 provide for the method by which the market rate for work done for a trust is to be determined for the purposes of section 3AC of the *Pay-roll Tax Act 1971*. Under section 3AC, a distribution to a person as beneficiary under a trust that is in lieu of wages for work done for the trust by the person is treated as wages and is taxable accordingly. In order to determine whether a particular trust distribution is in lieu of wages for work done for the trust, and the extent to which it is in lieu of wages, it is necessary to calculate the wages that would be payable to the person for that work if wages were payable at the market rate for that work. This Regulation provides for the method of determining that market rate, which is to be used if there is no relevant industrial instrument providing for a minimum wage rate in respect of the work.

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

## **2003 No 410**

Clause 1          Pay-roll Tax Amendment (Trust Distributions) Regulation 2003

---

### **Pay-roll Tax Amendment (Trust Distributions) Regulation 2003**

under the

Pay-roll Tax Act 1971

#### **1 Name of Regulation**

This Regulation is the *Pay-roll Tax Amendment (Trust Distributions) Regulation 2003*.

#### **2 Commencement**

This Regulation commences on 1 July 2003.

#### **3 Amendment of Pay-roll Tax Regulation 1998**

The *Pay-roll Tax Regulation 1998* is amended as set out in Schedule 1.

---

**Schedule 1 Amendment**

(Clause 3)

**Part 3A**

Insert after Part 3:

**Part 3A Inclusion of trust distributions as wages****12 Determination of minimum wage rate applicable in respect of work done for a trust**

- (1) For the purposes of paragraph (c) of the definition of *market rate* in section 3AC (7) of the Act, the minimum wage rate applicable to work done for a trust by a person during a financial year is to be determined in accordance with one of the following methods:
  - (a) the hourly rate method, as set out in clause 12A,
  - (b) the daily rate method, as set out in clause 12B,
  - (c) the weekly rate method, as set out in clause 12C.
- (2) A person who makes a distribution to another person as beneficiary under a trust may determine which of the above methods is to be used in determining the minimum wage rate applicable in respect of any work done for the trust by the other person in a financial year.
- (3) The same method must be used in respect of all work done for the trust by the person in the financial year.

**12A Hourly rate method**

- (1) The hourly rate method requires the average weekly wage for the financial year in which the work was done for the trust by the person to be divided by 40 in order to determine the hourly wage rate for the work.
- (2) The minimum wage rate applicable to the work done for the trust by the person during the financial year is then determined by multiplying the hourly wage rate for the work by the total number of hours during the financial year in which work was done for the trust by the person.

## 2003 No 410

Pay-roll Tax Amendment (Trust Distributions) Regulation 2003

Schedule 1 Amendment

---

### 12B Daily rate method

- (1) The daily rate method requires the average weekly wage for the financial year in which the work was done for the trust by the person to be divided by 5 in order to determine the daily wage rate for the work.
- (2) The minimum wage rate applicable to work done for the trust by the person during the financial year is then determined by multiplying the daily wage rate for the work by the total number of days during the financial year on which work was done for the trust by the person (regardless of the number of hours worked on those days).

### 12C Weekly rate method

- (1) The weekly rate method requires the minimum wage rate applicable to work done for the trust by a person during the financial year to be determined by multiplying the average weekly wage for the financial year by the total number of weeks (or parts of a week) during the financial year in which work was done for the trust by the person (regardless of the number of hours or days worked in those weeks).
- (2) In this clause:  
*week* means a period of 7 days starting on a Monday.

### 12D Average weekly wage—meaning

In this Part:

*average weekly wage* for a financial year means the full-time adult ordinary time earnings (original) of persons for New South Wales in the February quarter immediately preceding the financial year, as set out in *Average Weekly Earnings, Australia* published by the Australian Bureau of Statistics.

BY AUTHORITY

---