

TASMANIA

**PAYROLL TAX REBATE (APPRENTICES,
TRAINEES AND YOUTH EMPLOYEES) BILL 2017**

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PAYROLL TAX REBATE (APPRENTICES, TRAINEES AND YOUTH EMPLOYEES) BILL 2017

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
1 June 2017

*(Brought in by the Treasurer, the Honourable Peter Carl
Gutwein)*

A BILL FOR

**An Act to enable the administration of a scheme for the
payment of payroll tax rebates in relation to apprentices,
trainees and youth employees in certain circumstances**

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Payroll Tax Rebate
(Apprentices, Trainees and Youth Employees)
Act 2017*.

2. Commencement

This Act –

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- (a) commences on 1 July 2017 if it receives the Royal Assent on or before that day; or
- (b) is taken to have commenced on 1 July 2017 if it receives the Royal Assent after that day.

3. Interpretation

In this Act, unless the contrary intention appears –

apprentice has the same meaning as in the *Training and Workforce Development Act 2013*;

authorised officer means a person appointed as an authorised officer under section 18(1);

claim means a claim, under section 8, of a rebate of payroll tax paid in respect of an eligible employee;

claimant means an employer who has made a claim;

claim period means any of the following periods in respect of which a claim has been made:

- (a) a calendar month;
- (b) a financial year;

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- (c) such other period as determined by the Commissioner;

Commissioner means the Commissioner of State Revenue appointed under section 7 of the *Taxation Administration Act 1997*;

Deputy Commissioner means a person appointed under section 11 of the *Taxation Administration Act 1997*;

eligible employee – see section 5;

eligible period means the period commencing 1 July 2017 and ending on 30 June 2019 inclusive;

employer means a person registered as an employer under section 86 of the *Payroll Tax Act 2008*;

employment agent has the same meaning as in section 37 of the *Payroll Tax Act 2008*;

interest has the same meaning as in the *Taxation Administration Act 1997*;

investigation means an investigation under this Act or the *Taxation Administration Act 1997* in relation to payroll tax;

payroll tax has the same meaning as in the *Payroll Tax Act 2008*;

payroll tax liability includes the liability to pay payroll tax and any interest, or

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penalty tax, payable in respect of payroll tax;

penalty tax has the same meaning as in the *Taxation Administration Act 1997*;

rebate means an amount paid, or payable, by the Commissioner under this Act;

scheme means the scheme established under this Act;

tax liability has the same meaning as in the *Taxation Administration Act 1997*;

trainee has the same meaning as in the *Training and Workforce Development Act 2013*;

training contract has the same meaning as in the *Training and Workforce Development Act 2013*;

youth employee means a person who has attained the age of 15 years, but has not attained the age of 25 years, who is employed or engaged other than as a trainee or apprentice.

PART 2 – REBATE SCHEME

4. Establishment of rebate scheme

- (1) The Crown is to establish a scheme for the payment of rebates equivalent to the payroll tax paid by an employer for an eligible employee as specified in this Act.
- (2) Rebates are to be paid to employers under such conditions as are determined by the Commissioner.

5. Eligible employee for rebate

- (1) For the purposes of this Act, a person is an eligible employee if –
 - (a) the person is employed or engaged as a trainee, or apprentice, by an employer within the eligible period; or
 - (b) the person –
 - (i) is employed or engaged within the eligible period by an employer, as a new employee of that employer, in employment that is not casual employment within the meaning of the *Industrial Relations Act 1984*; and

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- (ii) is a youth employee at the time of being so employed or engaged.

- (2) For the purposes of subsection (1)(a), a person is employed or engaged as a trainee, or apprentice, within the eligible period if the person's training contract takes effect under the *Training and Workforce Development Act 2013* within the eligible period.

- (3) For the purposes of subsection (1)(b), a youth employee is a new employee of an employer, if the youth employee –
 - (a) was not employed or engaged by that employer on 25 May 2017; and
 - (b) has not been previously employed, or engaged, by that employer within the eligible period.

- (4) For the purposes of this section, if a person employed or engaged as a trainee, or apprentice or youth employee, within the eligible period is a service provider within the meaning of section 37 of the *Payroll Tax Act 2008* –
 - (a) the person is taken to be employed or engaged by the employment agent who procured the services of the service provider within the meaning of section 37 of the *Payroll Tax Act 2008*; and
 - (b) that employment agent is taken to be the employer of the person for the purposes of this Act.

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- (5) For the purposes of this section, a person is not employed or engaged as a trainee, apprentice or youth employee by an employer within the eligible period if –
- (a) the person is employed or engaged by the employer within the eligible period as a result of the employer assuming the responsibility for any of the employee's entitlements, either directly or indirectly, as part of a business merger, takeover, acquisition or similar business dealing; or
 - (b) during the eligible period, the person is employed or engaged by the employer as a result of a transfer of the employee from another employer within the same group, within the meaning of section 67 of the *Payroll Tax Act 2008*, as the employer.
- (6) Despite subsection (5), if –
- (a) an employer (*the subsequent employer*) employs or engages a person within the eligible period in either circumstance specified in that subsection; and
 - (b) immediately before the subsequent employer employed or engaged the person, the person was an eligible employee for his or her previous employer –

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that person is taken to be an eligible employee in respect of the subsequent employer as if the subsequent employer were the previous employer of the person.

- (7) For the avoidance of doubt, the fact that –
- (a) a person is employed or engaged on a part-time or full-time basis; or
 - (b) a rebate has been payable under this Act in respect of a trainee or apprentice; or
 - (c) a rebate has been payable under this Act in respect of a youth employee to a previous employer of the youth employee –

does not affect whether the person is an eligible employee for the purposes of this Act.

6. Duration of rebate

- (1) A rebate under this Act is only payable in respect of a trainee or apprentice for a period of 2 years from the day that the training contract of the trainee or apprentice takes effect under the *Training and Workforce Development Act 2013*.
- (2) A rebate under this Act is only payable in respect of a youth employee for a period of one year from the date that the youth employee commenced the employment or engagement within the eligible period that made the

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employee an eligible employee under section 5(1)(b).

- (3) A rebate payable under this Act in respect of an eligible employee who is a youth employee is payable for the entire period of one year as calculated under subsection (2) for the eligible employee even if the eligible employee ceases to be a youth employee during that period.

7. Amount of rebate

- (1) In this section –

applicable percentage, in relation to the calculation of a rebate, means the percentage specified in the definition of **R** in Schedule 1 to the *Payroll Tax Act 2008*, as used to determine the payroll tax liability of the employer for the claim period in respect of which the rebate is being so calculated.

- (2) Unless otherwise determined by the Commissioner, a rebate of payroll tax payable under this Act, to an employer in respect of a claim period, is the lesser of the following:
- (a) the applicable percentage of the total wages paid in respect of each eligible employee of that employer for that claim period;
 - (b) the amount of payroll tax paid by that employer for that claim period.

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8. Claim for rebate

- (1) An employer may claim a rebate of payroll tax, paid in respect of a claim period, from the Commissioner if –
 - (a) the employer has paid in full the employer's payroll tax liability up to, and including, that claim period; and
 - (b) the employer has complied with, to the satisfaction of the Commissioner –
 - (i) the applicable requirements of this Act and the *Payroll Tax Act 2008*; and
 - (ii) any investigation in respect of the employer; and
 - (c) there are no incomplete investigations in respect of the employer.
- (2) A claim must –
 - (a) be made in a form approved by the Commissioner; and
 - (b) include any additional information requested by the Commissioner; and
 - (c) be made –
 - (i) within the 9-month period immediately after the financial year that includes the claim

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period, unless otherwise specified by the Commissioner; or

- (ii) if, before the expiry of the period specified in subparagraph (i), an investigation has been commenced in respect of the claimant that has not been completed before the expiry of that period, within the 2-month period immediately after the completion of the investigation.
- (3) The Commissioner may require a claimant to provide further information, to support the claimant's claim, in the form of a statutory declaration.
- (4) A claim made in respect of a claim period that is made outside the relevant period specified in subsection (2)(c) is void.

9. Determination of claim

- (1) On receipt of a claim in respect of an eligible employee for a claim period, the Commissioner is to determine whether a rebate is payable under the scheme in respect of that eligible employee in that claim period.
- (2) If the Commissioner decides that a rebate is payable under the scheme, the Commissioner may authorise the payment of that rebate, subject to any terms or conditions the Commissioner thinks appropriate in the circumstances.

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- (3) A rebate payable under this Act is to be paid in any way the Commissioner considers appropriate in the circumstances.

10. Rebate may be used to offset other tax liabilities

- (1) If –

- (a) the Commissioner has decided that a rebate is payable to an employer under this Act; and
- (b) the employer has a tax liability due and owing to the Crown –

the Commissioner may apply the rebate payable under this Act against the tax liability due and owing.

- (2) If the Commissioner applies the rebate payable to an employer under this Act against a tax liability under this section, the Commissioner is to notify the employer in writing of that fact.

11. Amendment or reversal of claim

The Commissioner may vary or reverse a decision in respect of a claim if the Commissioner, after deciding the claim, is later satisfied, independently of an objection under this Act, that –

- (a) the decision was incorrect; or

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- (b) the decision was made on the basis of, or having regard to, false or misleading information; or
- (c) the claimant failed to provide information required, or requested by the Commissioner, as part of the claim; or
- (d) the claimant failed to comply with any conditions imposed on the rebate under this Act.

12. Payments from Public Account

If the Commissioner is satisfied that a rebate is payable in accordance with the provisions of this Act, the amount of the rebate is to be paid from the Public Account.

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PART 3 – OBJECTIONS AND APPEALS

13. Objections

- (1) A claimant (or former claimant) who is dissatisfied with a decision under this Act –
 - (a) made in respect of a claim; or
 - (b) to vary or reverse a prior decision under section 11 in respect of a claim; or
 - (c) to require repayment of the rebate, or to impose a penalty, under section 19 in respect of a claim –may lodge a written notice of objection with the Commissioner.
- (2) An objection under subsection (1) is to –
 - (a) be in writing; and
 - (b) include the grounds for the objection; and
 - (c) be lodged with the Commissioner within 60 days after the day on which the claimant received written notice of the decision to which the objection relates.
- (3) An objection is taken to have been lodged when it is received by the Commissioner.
- (4) If the Commissioner is satisfied that a claimant (or former claimant) has a reasonable excuse for

failing to lodge an objection within the period specified in subsection (2)(c), the Commissioner may extend the time for lodging the objection.

- (5) For the avoidance of doubt, a person making an objection under this section has the onus of proving his or her case and the grounds for the objection.

14. Determination of objection

- (1) After considering the grounds of an objection, and any evidence the Commissioner considers relevant to the objection, the Commissioner may determine the objection by confirming, varying or reversing the decision to which the objection relates.
- (2) After making a determination under subsection (1), the Commissioner must notify the claimant who made the objection, in writing, of –
- (a) the determination made under that subsection in respect of the objection; and
 - (b) the reasons for the determination.
- (3) If the Commissioner delegates his or her functions or powers under this Part, the Commissioner is to ensure that a determination of an objection under subsection (1) is not made by –

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- (a) the person who made the decision to which the objection relates; or
 - (b) if the person who made the decision to which the objection relates was a delegate of the Commissioner, a subordinate of that person.
- (4) The Commissioner is to delegate his or her functions and powers under this Part in respect of the determination of an objection under subsection (1) if the Commissioner made the decision to which the objection relates.

15. Right of review or appeal

- (1) A claimant may apply to the Magistrates Court (Administrative Appeals Division) for a review of, or may appeal to the Supreme Court against –
 - (a) the determination of the claimant’s objection under this Part; or
 - (b) the failure to determine the claimant’s objection under this Part.
- (2) An application for review or an appeal –
 - (a) is to be made within 60 days after the date of service on the claimant of the notice under section 14(2) of the determination of the objection to which the review or appeal relates; and
 - (b) is not to be made before 90 days after the objection to which the review or appeal

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relates is lodged, if the review or appeal relates to the failure to determine the objection under this Part.

- (3) A claimant must give written notice to the Commissioner of the claimant's intention to apply for a review, or an appeal, under subsection (1)(b) at least 14 days before applying for the review or appeal.

16. Objection, review or appeal not to stay proceedings

- (1) An objection, review or appeal under this Part does not stay the operation of the decision to which the objection, review or appeal relates.
- (2) If an objection, review or appeal is made and determined under this Part, the Commissioner must take any necessary actions required to give effect to the determination of the objection, review or appeal.

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PART 4 – MISCELLANEOUS

Division 1 – Administration

17. Delegation by Commissioner, &c.

- (1) The Commissioner may delegate any of his or her functions or powers related to the administration of this Act other than this power of delegation.
- (2) Subject to the direction and control of the Commissioner, a Deputy Commissioner has the same functions and powers as the Commissioner under this Act.

18. Authorised officers

- (1) The Commissioner may appoint a person as an authorised officer for the purposes of this Act.
- (2) For the purposes of section 77(1)(e)(x) of the *Taxation Administration Act 1997*, an authorised officer is a prescribed person.
- (3) The Commissioner is to issue an authorised officer with an identity card that –
 - (a) bears the name, signature and photograph of the authorised officer to whom it relates; and
 - (b) states that the authorised officer is an authorised officer for the purposes of this Act.

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- (4) An identity card of an authorised officer under this section may be in the form of an endorsement on an identity card issued to that authorised officer under a taxation law, within the meaning of the *Taxation Administration Act 1997*.

19. Power to require repayment and impose penalty

- (1) The Commissioner may, by written notice, require a claimant (or former claimant) to repay all or part of a rebate paid to the claimant (or former claimant) if –
- (a) the amount of the rebate to be repaid was paid in error; or
 - (b) the Commissioner varies or reverses, in accordance with section 11, the decision in respect of which the amount of the rebate to be repaid was paid; or
 - (c) the Commissioner is satisfied that the claimant is not eligible for the amount of the rebate that was paid.
- (2) The Commissioner, by the notice specified in subsection (1) or another notice, may impose a penalty not exceeding the amount of the rebate that the claimant (or former claimant) is required to repay under subsection (1) if –
- (a) the claimant (or former claimant) contravenes section 23(1) or (2); and

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- (b) as a result of that contravention a rebate, or part of a rebate, is paid, or is applied against a tax liability due and owing to the Crown, under this Act.
- (3) If a claimant (or former claimant) –
 - (a) fails to make a repayment required under this section; or
 - (b) fails to meet the conditions of the rebate –

the Commissioner may, by written notice, impose a penalty not exceeding the amount that the claimant (or former claimant) is required to repay.
- (4) If an amount of a rebate is paid in error to a third party, the Commissioner may, by written notice, require the third party to repay the amount to the Commissioner.

20. Power to recover amount paid in error, &c.

- (1) This section applies to the following amounts:
 - (a) an amount that a claimant (or former claimant) is required to repay under the conditions of the rebate or by requirement of the Commissioner under this Act;
 - (b) an amount of penalty imposed on a claimant (or former claimant) under section 19;

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- (c) an amount that a third party is required to repay by requirement of the Commissioner under this Act.
- (2) The liability arising from a requirement to pay, or repay, an amount to which this section applies is, if the requirement attaches to 2 or more persons, joint and several.
- (3) The Commissioner may recover as a debt due to the Crown –
 - (a) an amount to which this section applies; and
 - (b) any reasonable costs and expenses incurred by the Commissioner in connection with the recovery, or attempted recovery, by any lawful means of the amount referred to in paragraph (a).
- (4) If a person fails to pay an amount to which this section applies, or any part of that amount, within the time specified in a notice under section 19 which requires that payment, the Commissioner, by written notice to the person, may require the person to pay interest on the unpaid amount.
- (5) If the Commissioner requires a person to pay interest on an amount under subsection (4), the person is liable to pay interest on the amount, or part of the amount, that is unpaid –

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- (a) on a daily basis from the end of the last day for payment, specified in the notice under section 19 in respect of the amount, until the day it is paid; and
 - (b) at the interest rate specified in section 35 of the *Taxation Administration Act 1997*.
- (6) Despite subsection (5), a person is not liable to pay interest on an amount as required by that subsection if the amount of interest that would be payable under that subsection would be less than \$20.
- (7) The Commissioner may enter into an arrangement (which may include provision for the payment of interest in respect of the arrangement) for payment of a liability outstanding under this section by instalments.
- (8) The Commissioner may write off the whole or part of a liability to pay an amount to which this section applies, or any interest relating to such an amount, if satisfied that action, or further action, to recover the amount outstanding or interest is impracticable or unwarranted.
- (9) The Commissioner, in any circumstances he or she considers appropriate, may remit interest payable under this section by any amount.

21. Recovery of rebates and costs from third parties

- (1) The Commissioner, by notice in writing, may require any of the following persons instead of

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the claimant (or former claimant) to pay any amount due under section 19 or 20 in respect of the claimant:

- (a) a person from whom any money is due or accruing or may become due to the claimant (or former claimant);
 - (b) a person who holds or may subsequently hold money for or on account of the claimant (or former claimant);
 - (c) a person who holds or may subsequently hold money on account of some other person for payment to the claimant (or former claimant);
 - (d) a person who has authority from some other person to pay money to the claimant (or former claimant).
- (2) A copy of the notice made under subsection (1) is to be served on the claimant (or former claimant) to which it relates.
- (3) The amount of money required to be paid by a person under subsection (1) is –
- (a) if the amount of the money held or due or authorised to be paid does not exceed the amount owed by the claimant (or former claimant) to the Commissioner, all the money; or
 - (b) if the amount of the money exceeds the amount owed by the claimant (or former

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claimant), sufficient money to pay the amount owed.

(4) A person required to pay money under this section must pay the money to the Commissioner –

(a) as soon as practicable after receiving the notice referred to in subsection (1); or

(b) when the money is held by the person –

whichever is the later, or within any later period specified by the Commissioner.

(5) A person subject to a requirement of the Commissioner under this section must comply with the requirement.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 500 penalty units; or

(b) an individual, a fine not exceeding 100 penalty units.

(6) If the whole or a part of an amount specified in a notice referred to in subsection (1) is paid by a person other than the person on whom that notice is served –

(a) within 7 days after the receipt of the payment, the Commissioner is to notify –

(i) the person on whom the notice was served; and

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- (ii) the claimant (or former claimant) to which the notice relates; and
- (b) that notice is taken to be amended accordingly to deduct the amount so paid from the amount owing under the notice.

22. Application of certain provisions of *Taxation Administration Act 1997*

- (1) Parts 8 and 9 of the *Taxation Administration Act 1997* (*that Act*) apply under this Act as if –
 - (a) a reference in those Parts of that Act to a “required record” includes a reference to a record required to be kept for the purposes of this Act; and
 - (b) a reference in those Parts of that Act to an “authorised officer” were a reference to an authorised officer within the meaning of this Act; and
 - (c) a reference in those Parts of that Act to a “taxation law” included a reference to this Act; and
 - (d) a reference in those Parts of that Act to a “tax officer” were a reference to an authorised officer within the meaning of this Act; and
 - (e) a reference in those Parts of that Act to a “taxpayer” were a reference to a claimant

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- (including a former claimant) within the meaning of this Act; and
- (f) the reference in section 60(1) of that Act to a “person’s tax liability under a taxation law to be properly assessed” were a reference to a person’s claim to be properly decided within the meaning of this Act; and
 - (g) the reference in section 65(2) of that Act to a “person’s tax liability” were a reference to a person’s eligibility for a rebate under this Act; and
 - (h) section 67(1B) of that Act were omitted; and
 - (i) section 67(1C)(a) of that Act were omitted; and
 - (j) the reference in section 68 of that Act to “the assessment or collection of tax” were a reference to a claim under this Act; and
 - (k) the reference in section 69(2) of that Act to a “liability under a taxation law” were a reference to a claim under this Act; and
 - (l) section 71(1)(d) of that Act were omitted.
- (2) For the purposes of Parts 8 and 9 of the *Taxation Administration Act 1997* as applied under subsection (1), a term used in those Parts has the

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same meaning in this Act as it has in that Act,
unless otherwise –

- (a) specified in this section; or
 - (b) prescribed in the regulations.
- (3) Regulations made under this Act may modify the application of Parts 8 and 9 of the *Taxation Administration Act 1997* as applied under subsection (1).

Division 2 – General

23. False or misleading information

- (1) A person must not, in giving any information under this Act, dishonestly –
- (a) make a statement that is false or misleading; or
 - (b) omit any matter from a statement if, without that matter, the statement is false or misleading; or
 - (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 750 penalty units; or

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- (b) an individual, a fine not exceeding 150 penalty units.
- (2) A person must not, in giving any information under this Act, intentionally or negligently –
 - (a) make a statement that is false or misleading; or
 - (b) omit any matter from a statement if, without that matter, the statement is false or misleading; or
 - (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

24. Evidence

- (1) A certificate signed by the Commissioner stating that a rebate was paid to a person named in the certificate on a specified date is admissible in legal proceedings as evidence of the payment.
- (2) A copy of a notice issued by the Commissioner imposing a penalty under this Act is admissible

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in legal proceedings as evidence of the imposition of the penalty.

- (3) A copy of a notice issued by the Commissioner requiring the payment or repayment of a specified amount is admissible in legal proceedings as evidence –
- (a) that the requirement was made; and
 - (b) that the amount specified in the notice was outstanding at the date of the notice.

25. Time for commencing prosecution

Proceedings for an offence against this Act may only be commenced within 3 years after the date on which the offence is alleged to have been committed.

26. Protection of Commissioner, &c.

- (1) This section applies to –
- (a) the Commissioner or Deputy Commissioner; and
 - (b) a delegate of the Commissioner who is a State Service officer or State Service employee.
- (2) No personal liability attaches to a person to whom this section applies for an honest act or omission of that person in the performance or

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exercise, or purported performance or exercise, of his or her functions or powers under this Act.

- (3) A liability that would, but for subsection (2), lie against a person to whom this section applies, lies instead against the Crown.

27. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations made under this Act may –
- (a) authorise any matter to be determined, applied or regulated by the Commissioner; and
 - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) Regulations made under this Act may –
- (a) provide that a contravention of, or failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

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28. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

29. Repeal of Act

This Act is repealed on 30 June 2023.