

EMPLOYMENT INCENTIVE SCHEME (PAYROLL TAX REBATE) BILL 2009

NOTES ON CLAUSES

Part 1 – Preliminary

Part 1 of the Act contains the introductory provisions, including:

- the purpose and commencement provisions;
- the definitions of words for the purposes of the Act;
- the establishment and administration of a scheme to pay rebates of payroll tax; and
- the date on which the Act will be repealed.

- Clause 1 Short title.
- Clause 2 The *Employment Incentive Scheme (Payroll Tax Rebate) Act 2009* commences on 11 June 2009.
- Clause 3 Defines terms used in the Act.
- Clause 4 Sub-clause (1) provides for the establishment of a scheme for the payment of payroll tax rebates for new employment created between 11 June 2009 and 30 June 2010.
- Sub-clause (2) provides that payments under the Scheme may be made in respect of wages paid before 1 July 2011.
- Clause 5 Any rebate paid under the Scheme is to be paid from the Consolidated Fund.
- Clause 6 Only employers registered under the *Payroll Tax Act 2008* are eligible to claim a rebate and rebates are to be paid under conditions imposed by the Commissioner of State Revenue.
- Clause 7 The *Employment Incentive Scheme (Payroll Tax Rebate) Act 2009* is to be repealed on 1 January 2015, which is three years after the last claims may be made and on the date for which prosecutions under the Act may no longer be made.

Part 2 – Employment incentive scheme rebate

Part two of the Act provides for the Commissioner to determine the eligibility criteria for the Scheme, the form of a claim against the Scheme and the Commissioner's power to decide claims.

This part also covers payment of the rebate and objections, reviews

and appeals.

- Clause 8 The Commissioner of State Revenue is to determine the eligibility criteria for the Scheme.
- Clause 9 A rebate is only payable under the Scheme if the claimant meets the eligibility criteria.
- Clause 10 Sub-clause (1) provides that a claim against the Scheme is to be made to the Commissioner.
- Sub-clause (2) provides that a claim must be in a form approved by the Commissioner and must contain the information required by the Commissioner.
- Sub-clause (3) provides that the claimant must provide any further information that the Commissioner requires.
- Sub-clause (4) gives the Commissioner the power to require verification of any information provided by a statutory declaration or other evidence.
- Sub-clauses (5) and (6) provide that an employer may only make a claim within a period determined by the Commissioner, but the Commissioner has the discretion to allow a claim outside the claim period. However, Sub-clause (7) provides that a claim may not be made after 31 December 2011.
- Sub-clause (8) provides that a claimant may amend a claim with the Commissioner's consent.
- Clause 11 Sub-clause (1) provides that the Commissioner is to decide a claim and determine the amount of rebate payable under the Scheme.
- Sub-clause (2) provides that the Commissioner may authorise the payment of any rebate that is payable.
- Clause 12 Sub-clause (1) provides for a rebate to be paid in any manner the Commissioner considers appropriate.
- Sub-clause (2) provides that a rebate can be paid to the claimant or a person nominated by the claimant.
- Sub-clause (3) gives the Commissioner the power to offset any rebate payable against an amount outstanding under this Act, or any taxation law.
- Clause 13 The Commissioner may impose conditions on the payment of the rebate and may require the claimant to give notice of non-compliance with a condition and repay the rebate. Failure to comply with an imposed condition is an offence and penalties may be applied.

- Clause 14 Allows the Commissioner to vary or reverse a decision (independently of an objection) if the decision is later found to be incorrect; or the claimant failed to provide relevant information; or the claimant failed to comply with any condition; or the claimant failed to meet any eligibility criteria.
- Clause 15 Sub-clause (1) provides for a claimant to lodge an objection if the claimant is dissatisfied with a decision of the Commissioner in relation to a claim.
- Sub-clause (2) provides that an objection must be in writing and must state the full grounds of the objection.
- Sub-clause (3) provides that an objection is to be lodged within sixty days of the Commissioner's notifying the claimant of the decision.
- Sub-clause (4) provides that an objection is taken to be lodged when it is received by the Commissioner.
- Sub-clause (5) provides that the Commissioner may extend the time for lodging the objection if satisfied that the objector had a reasonable excuse for failing to lodge the objection in time.
- Sub-clause (6) provides that a person making an objection has the onus of proving his or her case.
- Clause 16 Sub-clause (1) provides that after considering an objection, the Commissioner may confirm, vary or reverse the decision that is subject to the objection.
- Sub-clause (2) requires the Commissioner to give the objector written notice of the outcome of the objection, including reasons for the determination.
- Sub-clause (3) provides that the Commissioner may not delegate the power to consider and determine an objection to the person who made the decision to which the objection relates, or to the subordinate of that person.
- Clause 17 Sub-clause (1) allows a claimant, if dissatisfied with the Commissioner's determination of an objection (or failure to determine an objection) to seek a review by the Magistrates Court or appeal to the Supreme Court.
- Sub-clause (2) requires that a review or appeal must be made within 60 days after the date of service of the notice of determination of an objection. Where the Commissioner fails to determine an objection within 90 days after lodgement the claimant may also seek a review or appeal.
- Sub-clause (3) requires the claimant to give the Commissioner

written notice at least 14 days before applying for a review or making an appeal against the Commissioner's failure to determine the claimant's objection.

Clause 18 Sub-clause (1) allows the Commissioner to act on the basis that a decision is correct until an objection, review or appeal is determined.

Sub-clause (2) requires the Commissioner to take any necessary action to give effect to the outcome of an objection, appeal or review.

Part 3 – Administration

This Part covers the Commissioner's power to delegate functions and powers and appoint authorised officers. It also allows the Commissioner to apply the record keeping, investigation and secrecy provisions of the *Taxation Administration Act 1997*.

Clause 19 Sub-clause (1) provides that the Commissioner may delegate any of his or her powers or functions related to the Scheme.

Sub-clause (2) provides that a Deputy Commissioner has the same functions and powers as the Commissioner, subject to the direction and control of the Commissioner.

Clause 20 Sub-clause (1) provides that the Commissioner may appoint authorised officers for the purposes of the Act.

Sub-clause (2) provides that an authorised officer is a prescribed person for the purposes of section 77(1)(e)(x) of the *Taxation Administration Act 1997*. Section 77(1) of that Act permits a tax officer to disclose information obtained in relation to a taxation law to certain people, including prescribed persons.

Clause 21 Provides that the Commissioner is to issue an authorised officer with an identity card stating that the person is an authorised officer for the purposes of this Act.

Clause 22 This clause enables the Commissioner to apply the record keeping, investigation and secrecy provisions of the *Taxation Administration Act 1997* to this Act.

For the purposes of this Part, a number of terms found in Parts 8 and 9 of the *Taxation Administration Act* (which govern record keeping, investigations and secrecy under that Act) are taken to have been substituted with terms relevant to this Act. With the exception of these terms, all other terms found in the Part retain the meanings ascribed to them under the *Taxation Administration Act*.

Regulations may be made to modify the application of the provisions of this Part.

Part 4 - Miscellaneous

This Part covers penalties for making false or misleading statements, the Commissioner's power to require repayment and impose penalties and interest where the rebate is not repaid in the period specified by the Commissioner and the Commissioner's powers of recovery. This Part also covers prosecutions and evidence, protection of the Commissioner and authorised officers from personal liability and the power to make regulations.

Clause 23 Sub-clause (1) provides that a person must not dishonestly make a false or misleading statement, either directly or through omission of any matter; or provide a document that is false or misleading without informing the person to whom the document is provided of that fact. Failure to do so may result in a penalty being applied.

Sub-clause (2) provides that a person must not intentionally or negligently make a false or misleading statement, either directly or through omission of any matter; or provide a document that is false or misleading without informing the person to whom the document is provided of that fact. Failure to do so may result in a penalty being applied.

Clause 24 Sub-clause (1) provides that the Commissioner may, by written notice, require the repayment of a rebate if the amount was paid in error or the Commissioner varies or reverses the decision under which the rebate was paid.

Sub-clause (2) provides that if a rebate is paid as a result of a false or misleading statement, the Commissioner may impose a penalty not exceeding the amount the applicant is required to repay. A written notice must be sent to the claimant.

Sub-clause (3) provides that if a claimant fails to make a repayment required under this section or the conditions of the rebate, the Commissioner may impose a penalty not exceeding the amount the applicant is required to repay. A written notice must be sent to the claimant.

Sub-clause (4) provides that if an amount is paid in error to a third party, the Commissioner may require the third party to repay the amount.

Clause 25 Sub-clause (1) limits the scope of the power to recover amounts under this clause from a claimant, former claimant or a third party to part or all of an amount that is required to be repaid or an amount of a penalty.

Sub-clause (2) provides that where the liability arising from a requirement to pay or repay an amount attaches to two or more persons, the liability is joint and several.

Sub-clause (3) provides that the Commissioner may recover as a debt due to the Crown any amount to which this section applies, and any reasonable costs and expenses incurred by the Commissioner in connection with the recovery of the amount.

Sub-clause (4) allows the Commissioner to impose interest on any amount that is not paid within the time specified.

Sub-clause (5) provides that where the Commissioner imposes interest on an amount under subsection (4), the interest is calculated on a daily basis from the payment date specified in the notice until the day that it is paid. The interest rate to be applied is that specified in section 35 of the *Taxation Administration Act 1997*.

Sub-clause (6) provides that if the amount of interest that would be payable under sub-clause (5) is less than \$20, the person is not liable to pay interest.

Sub-clause (7) enables the Commissioner to enter into an arrangement for payment of a liability outstanding under this section by instalments.

Sub-clause (8) enables the Commissioner to write off all or part of the outstanding liability or interest if recovery is impracticable or unwarranted.

Sub-clause (9) enables the Commissioner to remit interest payable under this section by any amount.

Clause 26

Sub-clause (1) provides that the Commissioner may, by written notice, recover any amount payable by a claimant from a person that owes or will owe money to the claimant, holds or will hold money on account for the claimant, holds or will hold money on account for another person for payment to the claimant or has authority to pay money to the claimant.

Sub-clause (2) provides that a copy of the notice is to be served on the claimant.

Sub-clause (3) provides that the amount of money to be paid by the person on whom the notice is served is either sufficient money to pay the amount payable, or if the amount payable does not exceed the amount payable, all of the money.

Sub-clause (4) requires the person to pay money under this section on receipt of the notice or when the money is held by the person, or within a period specified by the Commissioner.

Sub-clause (5) provides penalties for failure to comply with this section.

Sub-clause (6) requires the Commissioner to inform both the person on whom a notice is served and the claimant if another person pays all or part of an amount to be paid.

- Cause 27 A certificate signed by the Commissioner stating that a rebate was paid to a person named on the certificate on a specified date is admissible in legal proceedings as evidence of the payment. Also admissible are copies of notices issued by the Commissioner imposing a penalty under the Act and requiring payment or repayment of a specified amount.
- Clause 28 Any prosecution for an offence under the Act must be commenced within three years of the alleged commission of the offence.
- Clause 29 The Commissioner, an authorised officer or a delegate of the Commissioner appointed or employed under the *State Service Act 1994* is protected from personal liability in respect of an act done or an omission made honestly. The section imposes the liability that would otherwise attach to officers in these circumstances on the Crown.
- Clause 30 Sub-clause (1) provides the Governor with the power to make regulations for the purposes of the Act.
- Sub-clause (2) provides the scope for which regulations may be made.
- Sub-clause (3) provides that contravention or failure to comply with regulations is an offence. Penalties apply for failure to comply.
- Cause 31 Provides that the Treasurer and the Department of Treasury and Finance are responsible for the administration of the Act, until provision is made under the *Administrative Arrangements Act 1990*.