

CLAUSE NOTES

Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Bill 2017

Part 1 - Preliminary

- Clause 1** This Act may be cited as the *Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Act 2017*.
- Clause 2** This Act commences on 1 July 2017 and is taken to have commenced on 1 July 2017 if the Act receives Royal Assent after that date.
- Clause 3** Defines terms used in this Act.

Part 2 - Rebate Scheme

- Clause 4** Sub-clause (1) allows the Crown to establish a scheme for the payment of payroll tax rebates in accordance with this Act.
- Sub-clause (2) provides that rebates are to be paid to employers under such conditions as determined by the Commissioner of State Revenue (the Commissioner).
- Clause 5** Sub-clause (1) defines an eligible employee as a person employed or engaged as a trainee, apprentice or youth employee in the eligible period, which is from 1 July 2017 to 30 June 2019 inclusive. It excludes a person employed in casual employment.
- Sub-clause (2) provides that an apprentice or trainee employed within the eligible period is an eligible employee if their training contract takes effect within the eligible period.
- Sub-clause (3) provides that youth employees that were employed as at 25 May 2017, which is the date that the rebate scheme was announced, are not eligible employees. It also stops an employer rehiring an existing youth employee during the eligible period in order to claim the rebate.
- Sub-clause (4) provides that employment agents (sometimes referred to as labour hire firms) are eligible for the payroll tax rebate in circumstances where they have procured apprentices, trainees or youth employees for the purpose of sub-contracting those employees to clients. Employment agents are also eligible where they directly employ an eligible employee.
- Sub-clause (5) provides that a person is not an eligible employee if they were employed as a result of a business merger, takeover, acquisition or similar transaction and the employer assumed responsibility for any of the employee's entitlements. Similarly, employees that are transferred between businesses that

constitute part of the same payroll tax group will not be considered as eligible employees.

Sub-clause (6) clarifies that an employee subject to sub-clause (5) will still be considered an eligible employee if they were an eligible employee of their previous employer prior to the business merger, takeover, acquisition or similar transaction or transfer between businesses in a payroll tax group.

Sub-clause (7) clarifies that an eligible employee can be employed or engaged on a part-time or full-time basis. An eligible employee can also be a person previously employed as a trainee, apprentice or youth employee where the previous employer received a rebate under this Act.

Clause 6 Sub-clause (1) provides that the duration of the rebate payable for an apprentice or trainee is two years from the date that their training contract takes effect under the *Training and Workforce Development Act 2013*.

Sub-clause (2) provides that the duration of the rebate for a youth employee is one year from the date the youth employee commenced their employment or engagement.

Clause 7 Sub-clause (1) defines the applicable percentage to be the payroll tax rate specified in *Payroll Tax Act 2008* that applied during the claim period.

Sub-clause (2) provides that the amount of the rebate is to be the lesser of the payroll tax paid in respect of eligible employees or the total payroll tax paid by the employer during the claim period. The latter would only apply where an employer takes on an eligible employee whose wages push the employer's total wages over the payroll tax free threshold.

Clause 8 Sub-clause (1) provides that an employer may claim a rebate of payroll tax paid in respect of a claim period from the Commissioner if:

- the employer has paid in full the employer's payroll tax liability in relation to that claim period;
- the employer has complied with the relevant requirements of the Payroll Tax Act and any investigation concerning payroll tax or this Act; and
- there are no incomplete investigations in respect of the employer relating to payroll tax.

Sub-clause (2) provides that a claim must be made in an approved form within 9 months following the end of the financial year to which the claim relates. Sub-clause (2) also provides that an employer that is subject to a payroll tax investigation, or an investigation under this Act, will have an additional two months after completion of the investigation to make a claim, if the investigation had not been completed within the 9 month period.

Sub-clause (3) allows for the Commissioner to require a claimant to provide further information, to support their claim, in the form of a statutory declaration.

Sub-clause (4) deems a claim made outside the relevant claim period specified in sub-clause (2)(c) to be void.

Clause 9 Clause Sub-clause (1) provides that the Commissioner is responsible for determining whether a rebate is payable for each claim.

Sub-clause (2) provides for the Commissioner to authorise payment if it is decided that a rebate is payable under the scheme.

Sub-clause (3) provides that, if a rebate is payable, the Commissioner will pay the rebate in a way that he or she considers is appropriate.

Clause 10 Sub-clause (1) provides that the Commissioner may apply the rebate payable under this Act against a tax liability owing to the Crown by the employer.

Sub-clause (2) provides that, if the Commissioner applies the payroll tax rebate payable against another tax liability of the employer, the Commissioner is to notify the employer in writing.

Clause 11 Allows the Commissioner to vary or reverse a decision (independently of an objection) if the decision is later found to be incorrect; the claimant failed to provide relevant information; the claimant failed to comply with any condition; or the claimant failed to meet any eligibility criteria.

Clause 12 The rebate payable under this Act will be paid from the Public Account, which will be appropriated in annual appropriation bills.

Part 3 - Objections and Appeals

Clause 13 Sub-clause (1) provides for a claimant to lodge an objection to a decision of the Commissioner made under the Act.

Sub-clause (2) provides that an objection must be in writing, include the grounds of the objection, and be lodged within 60 days after receiving written notice of the relevant decision.

Sub-clause (3) provides that an objection is taken to be lodged when it is received by the Commissioner.

Sub-clause (4) provides for the Commissioner to extend the time period for an objection if the Commissioner is satisfied that the objector has a reasonable excuse for failing to object within 60 days.

Sub-clause (5) provides that the person making the objection has the onus to prove their case and the grounds of the objection.

- Clause 14** Sub-clause (1) provides that after considering an objection and any relevant evidence, 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 and to provide reasons for the decision.
- Sub-clause (3) provides that the Commissioner may not delegate the power to consider and determine an objection to the person who made the original decision, or to the subordinate of that person.
- Sub-clause (4) provides that, if the Commissioner made the original decision to which the objection relates, the Commissioner is to delegate its functions or powers in relation to the objection.
- Clause 15** Sub-clause (1) allows a claimant to seek a review in the Magistrates Court, or to lodge an appeal in the Supreme Court, against the Commissioner's determination of an objection or the Commissioner's failure to determine an objection.
- Sub-clause (2) requires that a review or appeal must be made within 60 days after the determination of an objection or not before 90 days if the appeal relates to a failure of the Commissioner to determine an objection.
- Sub-clause (3) requires the claimant to give the Commissioner written notice at least 14 days before applying for a review or an appeal, if the review or appeal relates to a failure of the Commissioner to consider an objection.
- Clause 16** 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 4 Miscellaneous - Division I - Administration

Part 4 contains administrative and investigative provisions typical of taxation legislation to enable the Commissioner to administer the rebate, recover amounts paid in error and to investigate and enforce compliance with the Act.

- Clause 17** Sub-clause (1) provides that the Commissioner may delegate any of his or her powers or functions related to the administration of this Act.
- 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 18** 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 clause 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.

Sub-clause (3) provides that the Commissioner is to issue an authorised officer with an identity card stating that the person is an authorised officer.

Sub-clause (4) specifies that an identity card of an authorised officer under this clause may be in the form of an endorsement on an identity card that has already been issued to that authorised officer under a taxation law.

Clause 19 Sub-clause (1) provides that the Commissioner may, by written notice, require a claimant to repay all or part of a rebate paid if: the amount was paid in error; the Commissioner varies or reverses the decision to pay the rebate; or the Commissioner is satisfied that the claimant is not eligible for the rebate that was paid.

Sub-clause (2) allows the Commissioner to impose a penalty not exceeding the amount of the rebate to be repaid if the claimant received the rebate as a result of making false or misleading statements.

Sub-clause (3) provides that, if a claimant fails to make a repayment, 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 in these circumstances.

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 20 Sub-clause (1) identifies amounts, including penalty amounts, that the Commissioner is able to recover under this clause from a claimant, former claimant or a third party.

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 any amount to which this clause applies, in addition to any reasonable costs and expenses incurred by the Commissioner in connection with the debt recovery.

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

Sub-clause (5) provides that 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 clause 35 of the Taxation Administration Act.

Sub-clause (6) provides that if the amount of interest that would be payable 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 by instalments.

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

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

Clause 21

Sub-clause (1) provides that the Commissioner may, by written notice, recover any amount payable by a claimant under this Act from third parties that owe or hold money for 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 held by that person does not exceed the amount payable to the Commissioner, all of the money.

Sub-clause (4) requires the person to pay money under this clause as soon as practicable after receiving a notice or within a period specified by the Commissioner.

Sub-clause (5) provides penalties for failure to comply with a requirement of the Commissioner under this clause.

Sub-clause (6) provides for the Commissioner to provide notice, within seven days of payment, to the third party if any amount they have been required to pay under this clause is paid by another person. The notice must specify that the amount paid has been deducted from the amount owing by the claimant.

Clause 22

Sub-clause (1) applies Parts 8 and 9 of the *Taxation Administration Act 1997* (*that Act*) to this Act with necessary modification to ensure appropriate terminology is used for the purposes of this Act.

Sub-clause (2) provides for the terms used in this Act and Parts 8 and 9 of the Taxation Administration Act to have the same meaning unless otherwise stated in this clause or prescribed in regulations.

Sub-clause (3) allows for regulations made under this Act to modify sub-clause (1) of this Act.

Part 4 Miscellaneous - Division 2 - General

- Clause 23** Sub-clause (1) provides for court imposed penalties to be applied to those who, under this Act, dishonestly make a statement that is false or misleading, omit any relevant matter from a statement, or provide a document that is false.
- Sub-clause (2) provides for a penalty to be applied to those who, under this Act, intentionally or negligently make a statement that is false or misleading, omit any relevant matter from a statement, or provide a document that is false.
- Clause 24** Sub-clause (1) provides that a certificate signed by the Commissioner stating that a rebate was paid to a person on a specified date is admissible in legal proceedings as evidence of the payment.
- Sub-clause (2) provides that a copy of a notice issued by the Commissioner imposing a penalty under this Act is admissible in legal proceedings as evidence of the imposition of the penalty.
- Sub-clause (3) provides that a copy of a notice issued by the Commissioner requiring payment or repayment of an amount is admissible in legal proceedings as evidence that the requirement was made and the amount was outstanding at the date of the notice.
- Clause 25** Provides that any prosecution for an offence under the Act must be commenced within three years of the date of the alleged commission of the offence.
- Clause 26** Sub-clause (1) applies to the Commissioner or Deputy Commissioner and a delegate of the Commissioner who is a State Service officer or State Service employee.
- Sub-clause (2) provides that the persons listed in sub-clause (1) are not personally liable for an honest act or omission done whilst carrying out functions or powers under this Act.
- Sub-clause (3) provides for any personal liability of the person under sub-clause (2) to instead lie against the Crown.
- Clause 27** Sub-clause (1) allows the Governor to make regulations for the purpose of this Act.
- Sub-clause (2) provides for regulations made under this Act to cover any matter to be determined, applied or regulated by the Commissioner.
- Sub-clause (3) provides for penalty if there is a contravention of, or failure to comply with, any of the regulations.

Clause 28 The administration of this Act is assigned to the Treasurer and the Department of Treasury and Finance will be responsible to the Minister.

Clause 29 This Act will be repealed on 30 June 2023, one year after the final year a claim can be made.